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THE GENERAL STATUTES OF NORTH CAROLINA

Containing General Laws of North Carolina through
the Legislative Session of 1965

Prepared under the Supervision of the Department of Justice
of the State of North Carolina

Annotated, under the Supervision of the Department of Justice,
by the Editorial Staff of the Publishers

Under the Direction of

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Volume 3A

1966 Replacement Volume

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Scope of Volume

Statutes:

Full text of Chapters 106 through 116 of the General Statutes of North Carolina, including all enactments through the Legislative Session of 1965 heretofore contained in 1960 Replacement Volume 3A of the General Statutes of North Carolina and the 1965 Cumulative Supplement thereto.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports volumes 1-265 (p. 217).
Federal Reporter volumes 1-300.
Federal Reporter 2nd Series volumes 1-347 (p. 320).
Federal Supplement volumes 1-242 (p. 512).
United States Reports volumes 1-381 (p. 531).
Supreme Court Reporter volumes 1-85.
North Carolina Law Review volumes 1-43 (p. 665).

Abbreviations

(The abbreviations below are those found in the General Statutes which refer to prior codes.)

P. R.	Potter's Revisal (1821, 1827)
R. S.	Revised Statutes (1837)
R. C.	Revised Code (1854)
C. C. P.	Code of Civil Procedure (1868)
Code	Code (1883)
Rev.	Revisal of 1905
C. S.	Consolidated Statutes (1919, 1924)

Preface

Volume 3 of the General Statutes of North Carolina of 1943 was replaced in 1952 by recompiled volumes 3A, 3B and 3C, containing Chapters 106 through 166 of the General Statutes, as amended and supplemented by the enactments of the General Assembly down through the 1951 Session. Chapter 167 was added at the 1953 Session. In 1960 a replacement volume 3A was published in which the statutes and annotations appearing in the recompiled volume 3A and in the 1959 Cumulative Supplement thereto were combined. In 1964 replacement volumes 3B and 3C were replaced by replacement volumes 3B, 3C and 3D, which combined the statutes and annotations appearing in the previous volumes 3B and 3C and in the 1963 Cumulative Supplement thereto. The present volume replaces the 1960 replacement volume 3A and combines the statutes and annotations appearing in the 1960 replacement volume and in the 1965 Cumulative Supplement.

Volume 3A contains Chapters 106 through 116. Volume 3B contains Chapters 117 through 136. Volume 3C contains Chapters 137 through 156. Volume 3D contains Chapters 157 through 167.

In replaçement volume 3A the form and the designations of subsections, subdivisions and lesser divisions of sections have in many instances been changed, so as to follow in every case the uniform system of numbering, lettering and indentation adopted by the General Statutes Commission. For example, subsections in the replacement volume are designated by lower case letters in parentheses, thus: (a). Subdivisions of both sections and subsections are designated by Arabic numerals in parentheses, thus: (1). Lesser divisions likewise follow a uniform plan. Attention is called to the fact that it has not, of course, been possible to make corresponding changes in any references that may appear in recompiled volumes 1A, 1B and 4A to sections contained in volume 3A.

The historical references appearing at the end of each section have been rearranged in chronological order. For instance, the historical references appended to § 31-5 read as follow: (1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2; 1840, c. 62; R. C., c. 119, s. 22; Code, s. 2176; Rev., s. 3115; C. S., s. 4133; 1945, c. 140.) In this connection attention should be called to a peculiarity in the manner of citing the early acts in the historical references. The acts through the year 1825 are cited, not by the chapter numbers of the session laws of the particular years, but by the chapter numbers assigned to them in Potter's Revisal (published in 1821 and containing the acts from 1715 through 1820) or in Potter's Revisal continued (published in 1827 and containing the acts from 1821 through 1825). Thus, in the illustration set out above the citations "1784, c. 204, s. 14; 1819, c. 1004, ss. 1, 2" refer to the chapter numbers in Potter's Revisal and not to the chapter numbers of the Laws of 1784 and 1819, respectively. The chapter numbers in Potter's Revisal and Potter's Revisal continued run consecutively, and hence do not correspond, at least after 1715, to the chapter numbers in the session laws of the particular years. After 1825 the chapter numbers in the session laws are used.

This replacement volume has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes, and any suggestions they may have for improving them, to the Department, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Thomas Wade Bruton,
Attorney General.

November 15, 1966.

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ARTICLE 1.

Department of Agriculture.

Part 1. Board of Agriculture.

§ **106-1. Constitutional provision.**—The General Assembly shall establish a Department of Agriculture, Immigration, and Statistics, under such regulations as may best promote the agricultural interests of the State, and shall enact laws for the adequate protection and encouragement of sheep hubandry. (Const., Art. III, s. 17; Rev., s. 3930; C. S., s. 4666.)

This section is identical with the constitutional provisions, Art. III, § 17, which is not self-executing, but simply directs the legislature to establish the Department of Agriculture, Immigration, and Statistics. Cunningham v. Sprinkle, 124 N.C. 638, 33 S.E. 138 (1899).

Cited in Nantahala Power & Light Co. v. Clay County, 213 N.C. 698, 197 S. E. 603 (1938).

§ **106-2. Department of Agriculture, Immigration, and Statistics established; Board of Agriculture, membership, terms of office, etc.**—The Department of Agriculture, Immigration, and Statistics is created and established and shall be under the control of the Commissioner of Agriculture, with the consent and advice of a board to be styled "The Board of Agriculture." The Board of Agriculture shall consist of the Commissioner of Agriculture, who shall be ex officio a member and chairman thereof and shall preside at all meetings, and of ten other members from the State at large, so distributed as to reasonably represent the different sections and agriculture of the State. In the appointment of the members of the Board the Governor shall also take into consideration the different agricultural interests of the State, and shall appoint one member who shall be a practical tobacco farmer to represent the tobacco farming interest, one who shall be a practical cotton grower to represent the cotton interest, one who shall be a practical truck farmer or general farmer to represent the truck and general farming interest, one who shall be a practical dairy farmer to represent the dairy and livestock interest of the State, one who shall be a practical poultryman to represent the poultry interest of the State, one who shall be a practical peanut grower to represent the peanut interests, one who shall be a man experienced in marketing to represent the marketing of products of the State. The members of such Board shall be appointed by the Governor by and with the consent of the Senate, when the terms of the incumbents respectively expire. The term of office of such members shall be six years and until their successors are duly appointed and qualified. The terms of office of the five members constituting the present Board of Agriculture shall continue for the time for which they were appointed. In making appointments for the enlarged Board of Agriculture, the Governor shall make the appointments so that the term of three members will be for two years, three for four and four for six years. Thereafter the appointments shall be made for six years. Vacancies in such Board shall be filled by the Governor for the unexpired term. The Commissioner of Agriculture and the members of the Board of Agriculture shall be practical farmers engaged in their profession. (Code, s. 2184; 1901, c. 479, ss. 2, 4; Rev., s. 3931; 1907, c. 497, s. 1; C. S., s. 4667; 1931, c. 360, s. 1; 1937, c. 174.)

Appointment of Members.—Members of the State Board of Agriculture are not constitutional officers, but being of legislative creation, are within the power of legislative appointment. They are not exclusively, nor of necessity, within the power of executive appointment. Cunningham v. Sprinkle, 124 N.C. 638, 33 S.E. 138 (1899).

Actions against Board.—The Board of Agriculture is a department of the State government and an action cannot be maintained against it without the consent of the State. Chemical Co. v. Board of Agriculture, 111 N.C. 135, 15 S.E. 1032 (1892).

Cited in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

§ **106-3. Compensation of members.** — Each member of the Board of Agriculture shall receive compensation for each day he attends a session of the Board and for each day necessarily spent in traveling to and from his residence. He shall also receive necessary traveling expenses for the distance to and from Raleigh. When attending any committee meeting each member of the committee, other than the chairman, shall receive the same per diem rate and mileage as is fixed for attending meetings of the Board. (1901, c. 479, s. 3; Rev., s. 3932; 1919, c. 247, s. 10½; C. S., s. 4668.)

Cross Reference.—See current appropriations act for per diem rate.

§ **106-4. Meetings of Board.** — The Board of Agriculture, herein established, hereafter called "the Board," shall meet for the transaction of business in the city of Raleigh at least twice a year, and oftener, if called by the Commissioner of Agriculture. (1901, c. 479, s. 3; Rev., s. 3935; C. S., s. 4669; 1921, c. 24; 1929, c. 252; 1931, c. 360, s. 2.)

§ **106-5. Executive committee and finance committee.** — The Board shall elect from its numbers an executive committee of four, of which committee the Commissioner shall also be ex officio a member and chairman. The Board shall elect a finance committee of five from its numbers. The Board shall prescribe the powers and duties of these committees, and the Commissioner may call meetings of these committees whenever in his opinion such meetings are desirable for the good of the Department. (Rev., s. 3936; 1907, c. 876, s. 1; C. S., s. 4670.)

§ **106-6. Moneys received to be paid into State treasury.**—All moneys arising from tonnage charges on fertilizers and fertilizing materials, inspection taxes on cottonseed meal and concentrated commercial feeding stuff, and from the sale of any property seized and condemned under the provisions of this chapter, and all other moneys which may come into the hands of the Commissioner of Agriculture or other officer, member or employee of the Department of Agriculture by virtue of this chapter, shall be paid into the State treasury by the Commissioner of Agriculture, and shall be kept on a separate account by the Treasurer as a fund for the exclusive use and benefit of the Department of Agriculture. (1876-7, c. 174, s. 22; Code, s. 2208; Rev., s. 3937; C. S., s. 4671.)

§ **106-7. Power of Board.**—The Board shall be empowered to hold in trust and exercise control over donations or bequests made to it for promoting the interests or purposes of the Department. (1901, c. 497, s. 3; Rev., s. 3933; C. S., s. 4672.)

§ **106-8. May require bonds of officers.** — Bonds may be required for such amounts as the Board may think best for all officers of the Department who handle funds. (1901, c. 479, s. 14; Rev., s. 3934; C. S., s. 4673.)

§ **106-9. Annual report.**—The Board shall annually make a report to the Governor, to be transmitted by him to the General Assembly the years when in session, of its work and matters relating thereto, which report shall contain a statement of all receipts and expenditures and the objects for which expended. (1907, c. 876, s. 2; C. S., s. 4674.)

§ **106-9.1. Investment of surplus in agriculture fund in interest bearing government securities.**—The Board of Agriculture, with the approval of the Governor and Council of State, is hereby authorized and empowered whenever in their discretion there is a cash surplus in the agriculture fund in excess of the amount required to meet the current needs and demands of the Department, to invest said surplus funds in bonds or certificates of indebtedness of the United States of America or bonds, notes or other obligations of any agency or instrumentality of the United States of America, when the payment of principal and interest thereof is fully guaranteed by the United States of America, or in bonds or notes of the State of North Carolina. The said funds shall be invested in such obligations as in the judgment of the Board of Agriculture, the Governor, and the Council of State may be readily converted into money. The interest and revenue received from such investment or profits realized from the sale thereof shall become a part of the agriculture fund and be likewise invested. (1945, c. 999.)

Part 1A. Collection and Refund of Fees and Taxes.

§ 106-9.2. Records and reports required of persons paying fees or taxes to Commissioner or Department; examination of records; determination of amount due by Commissioner in case of noncompliance. — (a) Every person paying fees or taxes to the Commissioner of Agriculture or to the Department of Agriculture under the provisions of this chapter shall keep such records as the Commissioner may prescribe to indicate accurately the fees or taxes due to the Commissioner or Department, and such records shall be preserved for a period of three (3) years, and shall at all times during the business hours of the day be subject to inspection by the Commissioner or his deputies or such other agents as may be duly authorized by the Commissioner. Any person failing to comply with or violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned in the discretion of the court.

(b) It shall be the duty of the Commissioner of Agriculture, by competent auditors, to have the books and records of every person paying fees or taxes to the Commissioner or Department examined at least once each year to determine if such persons are keeping complete records as provided by this section, and to determine if correct reports have been made to the Commissioner or Department covering the total amount of fees or taxes due by such persons.

(c) If any person shall fail, neglect or refuse to keep such records or to make such reports or pay fees or taxes due as required, and within the time provided in this chapter, the Commissioner shall immediately inform himself as best he may as to the matters and things required to be set forth in such records and reports, and from such information as he may be able to obtain determine and fix the amount of fees or taxes due the State from such delinquent person for the period covering the delinquency. The Commissioner shall proceed immediately to collect the fees or taxes due the State, including any penalties and interest thereon, in the manner provided in this article. (1963, c. 458.)

§ 106-9.3. Procedure for assessment of fees and taxes.—(a) If the Commissioner of Agriculture discovers from the examination of any report filed by a taxpayer or otherwise that any fee or tax or additional fee or tax is due from any taxpayer, he shall give notice to the taxpayer in writing of the kind and amount of fee or tax which is due and of his intent to assess the same, which notice shall contain advice to the effect that unless application for a rehearing is made within the time specified in subsection (c), the proposed assessment will become conclusive and final.

If the Commissioner is unable to obtain from the taxpayer adequate and reliable information upon which to base such assessment, the assessment may be made upon the basis of the best information available and, subject to the provisions hereinafter made, such assessment shall be deemed correct.

(b) The notice required to be given in subsection (a) may be delivered to the taxpayer by an agent of the Commissioner or may be sent by mail to the last known address of the taxpayer and such notice will be deemed to have been received in due course of the mail unless the taxpayer shall make an affidavit to the contrary within ninety (90) days after such notice is mailed, in which event the taxpayer shall be heard by the Commissioner in all respects as if he had made timely application.

(c) Any taxpayer who objects to a proposed assessment of fee or tax or additional fee or tax shall be entitled to a hearing before the Commissioner of Agriculture, provided application therefor is made in writing within thirty (30) days after the mailing or delivery of the notice required by subsection (a). If application for a hearing is made in due time, the Commissioner of Agriculture shall set a time and place for the hearing and after considering the taxpayer's objections shall give written notice of his decision to the taxpayer. The amount of fee or tax or additional fee or tax due from the taxpayer as finally determined by the Commissioner shall thereupon be assessed and upon assessment shall become immediately due and collectible.

Provided, the taxpayer may request the Commissioner at any time within thirty (30) days of notice of such proposed assessment for a written statement, or transcript, of the information and the evidence upon which the proposed assessment is based, and the Commissioner of Agriculture shall furnish such statement, or transcript, to the taxpayer. Provided, further, after request by the taxpayer for such written statement, or transcript, the taxpayer shall have thirty (30) days after the receipt of the same from the Commissioner of Agriculture to apply in writing for such hearing, explaining in detail his objections to such proposed assessment. If no request for such hearing is so made, such proposed assessment shall be final and conclusive.

(d) If no timely application for a hearing is made within thirty (30) days after notice of a proposed assessment of fee or tax or additional fee or tax is given pursuant to subsection (a), such proposed fee or tax or additional fee or tax assessment shall become final without further notice and shall be immediately due and collectible.

(e) Where a proper report has been filed by a taxpayer and in the absence of fraud, the Commissioner of Agriculture shall assess any fee or tax or additional fee or tax due from the taxpayer within three (3) years after the date upon which such report is filed or within three (3) years after the date upon which such report was required by law to be filed, whichever is the later. If no report has been filed, and in the absence of fraud, any fee or tax or additional fee or tax due from a taxpayer may be assessed at any time within five (5) years after the date upon which such report was required by law to be filed. In the event a false and fraudulent report has been filed or there has been an attempt in any manner to fraudulently defeat or evade a fee or tax, any fee or tax or additional fee or tax due from the taxpayer may be assessed at any time.

(f) Except as hereinafter provided in subsection (g), the Commissioner of Agriculture shall have no authority to assess any fee or tax or additional fee or tax under this section until the notice required by subsection (a) shall have been given and the period within which an application for a hearing may be filed has expired, or if a timely application for a hearing is filed, until written notice of the Commissioner's decision has been given to the taxpayer, provided, however, that if the notice required by subsection (a) shall be mailed or delivered within the limitation prescribed in subsection (e), such limitation shall be deemed to have been complied with and the proceeding may be carried forward to its conclusion.

(g) Notwithstanding any other provision of this section, the Commissioner of Agriculture shall have authority at any time within the applicable period of limitations to proceed at once to assess any fee or tax or additional fee or tax which he finds is due from a taxpayer if, in his opinion, the collection of such fee or tax is in jeopardy and immediate assessment is necessary in order to protect the interest of the State, provided, however, that if an assessment is made pursuant to the authority set forth in this subsection before the notice required by subsection (a) is given, such assessment shall not be valid unless the notice required by subsection (a) shall be given within thirty (30) days after the date of such assessment.

(h) All assessments of fees or taxes or additional fees or taxes (exclusive of penalties assessed thereon) shall bear interest at the rate of one half of one percent (0.5%) per month or fraction thereof from the time said fees or taxes or additional fees or taxes were due to have been paid until paid. (1963, c. 458.)

§ **106-9.4. Collection of delinquent fees and taxes.**—(a) If any fee or tax imposed by this chapter, or any other fee or tax levied by the State and payable to the Commissioner of Agriculture or the Department of Agriculture, or any portion of such fee or tax, be not paid within thirty (30) days after the same becomes due and payable, and after the same has been assessed, the Commissioner of Agriculture shall issue an order under his hand and official seal, directed to the sheriff of any county of the State commanding him to levy upon and sell the real and personal property of the taxpayer found within his county for the payment of the amount thereof, with the added penalties, additional taxes, interest, and cost of executing the same, and to return to the Commissioner of Agriculture the money collected by virtue thereof within a time to be therein specified, not less than sixty (60) days from the date of the order. The said sheriff shall, thereupon, proceed upon the same in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the order, to be collected in the same manner.

(b) Bank deposits, rents, salaries, wages, and all other choses in action or property incapable of manual levy or delivery, hereinafter called the intangible, belonging, owing, or to become due to any taxpayer subject to any of the provisions of this chapter, or which has been transferred by such taxpayer under circumstances which would permit it to be levied upon if it were tangible, shall be subject to attachment or garnishment as herein provided, and the person owing said intangible, matured or unmatured, or having same in his possession or control, hereinafter called the garnishee, shall become liable for all sums due by the taxpayer under this chapter to the extent of the amount of the intangible belonging, owing, or to become due to the taxpayer subject to the setoff of any matured or unmatured indebtedness of the taxpayer to the garnishee. To effect such attachment or garnishment the Commissioner of Agriculture shall serve or cause to be served upon the taxpayer and the garnishee a notice as hereinafter provided, which notice may be served by any deputy or employee of the Commissioner of Agriculture or by any officer having authority to serve summonses. Said notice shall show:

(1) The name of the taxpayer and his address, if known;
(2) The nature and amount of the fee or tax, and the interest and penalties thereon, and the year or years for which the same were levied or assessed, and
(3) Shall be accompanied by a copy of this subsection, and thereupon the procedure shall be as follows:

If the garnishee has no defense to offer or no setoff against the taxpayer, he shall, within ten (10) days after service of said notice, answer the same by sending to the Commissioner of Agriculture by registered mail a statement to that effect, and if the amount due or belonging to the taxpayer is then due or subject to his demand, it shall be remitted to the Commissioner with said statement, but if said amount is to mature in the future, the statement shall set forth that fact and the same shall be paid to the Commissioner upon maturity, and any payment by the garnishee hereunder shall be a complete extinguishment of any liability therefor on his part to the taxpayer. If the garnishee has any defense or setoff, he shall state the same in writing under oath, and, within ten (10) days after service of said notice, shall send two (2) copies of said statement to the Commissioner by registered mail; if the Commissioner admits such defense or setoff, he shall so advise the garnishee in writing within ten (10) days after receipt of such statement and the attachment or garnishment shall thereupon be discharged to the amount required by such defense or setoff, and any amount attached or garnished hereunder which is not affected by such defense or setoff shall be remitted to the Commissioner as above provided in cases where the garnishee has no defense or setoff, and with like effect. If the Commissioner shall not admit the defense or setoff, he shall set forth in writing his objections thereto and shall send a copy thereof to the garnishee within ten (10) days after receipt of the garnishee's statement, or within such further time as may be agreed on by the garnishee, and at the same time he shall file a copy of said notice, a copy of the garnishee's statement, and a copy of his objections thereto in the superior court of the county where the garnishee resides or does business where the issues made shall be tried as in civil actions.

If judgment is entered in favor of the Commissioner of Agriculture by default or after hearing, the garnishee shall become liable for the fee or taxes, interest and penalties due by the taxpayer to the extent of the amount over and above any defense or setoff of the garnishee belonging, owing, or to become due to the taxpayer, but payments shall not be required from amounts which are to become due to the taxpayer until the maturity thereof, nor shall more than ten percent (10%) of any taxpayer's salary or wages be required to be paid hereunder in any one month. The garnishee may satisfy said judgment upon paying said amount, and if he fails to do so, execution may issue as provided by law. From any judgment or order entered upon such hearing either the Commissioner of Agriculture or the garnishee may appeal as provided by law. If, before or after judgment, adequate security is filed for the payment of said taxes, interest, penalties, and costs, the attachment or garnishment may be released or execution stayed pending appeal, but the final judgment shall be paid or enforced as above provided. The taxpayer's sole remedies to question his liability for said fees or taxes, interest, and penalties shall be those provided in this article, as now or hereinafter amended or supplemented. If any third person claims any intangible attached or garnished hereunder and his lawful right thereto, or to any part thereof, is shown to the Commissioner, he shall discharge the attachment or garnishment to the extent necessary to protect such right, and if such right is asserted after the filing of said copies as aforesaid, it may be established by interpleader as now or hereafter provided by the General Statutes in cases of attachment and garnishment. In case such third party has no notice of proceedings hereunder, he shall have the right to file his petition under oath with the Commissioner at any time within twelve (12) months after said intangible is paid to him and if the Commissioner finds that such party is lawfully entitled thereto or to any part thereof, he shall pay the same to such party as provided for refunds by § 105-407 and if such payment is denied, said party may appeal from the determination of the Commissioner to the Superior Court of Wake County or to the superior court of the county wherein he resides or does business. The intangibles of a taxpayer shall be paid or collected hereunder only to the extent necessary to satisfy said fees or taxes, interest, penalties, and costs. Except as hereinafter set forth, the remedy provided in this section shall not be resorted to unless a warrant for collection or execution against the taxpayer has been returned unsatisfied: Provided, however, if the Commissioner is of opinion that the only effective remedy is that herein provided, it shall not be necessary that a warrant for collection or execution shall be first returned unsatisfied, and in no case shall it be a defense to the remedy herein provided that a warrant for collection or execution has not been first returned unsatisfied: Provided, however, that no salary or wage at the rate of less than two hundred dollars ($200.00) per month, whether paid weekly or monthly, shall be attached or garnished under the provisions of this section.

(c) In addition to the remedy herein provided, the Commissioner of Agriculture is authorized and empowered to make a certificate setting forth the essential particulars relating to the said fee or tax, including the amount thereof, the date when the same was due and payable, the person, firm, or corporation chargeable therewith, and the nature of the fee or tax, and under his hand and seal transmit the same to the clerk of the superior court of any county in which the delinquent taxpayer resides or has property; whereupon, it shall be the duty of the clerk of the superior court of the county to docket the said certificate and index the same on the cross index of judgments, and execution may issue thereon with the same force and effect as an execution upon any other judgment of the superior court; said tax shall become a lien on realty only from the date of the docketing of such certificate in the office of the clerk of the superior court and in personalty only from the date of the levy on such personalty and upon execution thereon no homestead or personal property exemption shall be allowed.

(d) The remedies herein given are cumulative and in addition to all other remedies provided by law for the collection of said fees and taxes. (1963, c. 458.)

§ **106-9.5. Refund of overpayment.** — If the Commissioner of Agriculture discovers from the examination of any report, or otherwise, that any taxpayer has overpaid the correct amount of any fee or tax (including penalties, interest and costs, if any), such overpayment shall be refunded to the taxpayer within sixty (60) days after it is ascertained together with interest thereon at the rate of six percent (6%) per annum: Provided, that interest on any such refund shall be computed from a date ninety (90) days after date tax was originally paid by the taxpayer. Provided, further, that demand for such refund is made by the taxpayer within three (3) years from the date of such overpayment or the due date of the report, whichever is later. (1963, c. 458.)

§ **106-9.6. Suits to prevent collection prohibited; payment under protest and recovery of fee or tax so paid.**—No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any fee or tax imposed in this chapter. Whenever a person shall have a valid defense to the enforcement of the collection of a fee or tax assessed or charged against him or his property, such person shall pay such fee or tax to the proper officer, and notify such officer in writing that he pays the same under protest. Such payment shall be without prejudice to any defense or rights he may have in the premises, and he may, at any time within thirty (30) days after such payment, demand the same in writing from the Commissioner of Agriculture; and if the same shall not be refunded within ninety (90) days thereafter, may sue such official in the courts of the State for the amount so demanded. Such suit must be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides. (1963, c. 458.)

Part 2. Commissioner of Agriculture.

§ **106-10. Election; term; vacancy.**—The Commissioner of Agriculture shall be elected at the general election for other State officers, shall be voted for on the same ballot with such officers, and his term of office shall be four years, and until his successor is elected and qualified. Any vacancy in the office of such Commissioner shall be filled by the Governor, the appointee to hold until the next regular election to the office and the qualification of his successor. (1901, c. 479, s. 4; Rev., s. 3938; C. S., s. 4675.)

§ **106-11. Salary of Commissioner of Agriculture.**—The salary of the Commissioner of Agriculture shall be eighteen thousand dollars ($18,000.00) a year, payable monthly. (1901, c. 479, s. 4; 1905, c. 529; Rev., s. 2749; 1907, c. 887, s. 1; 1913, c. 58; C. S., s. 3872; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 415; 1939, c. 338; 1943, c. 499, s. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 4.)

Editor's Note.—The 1963 amendment increased the salary from $12,000.00 to $18,000.00.

§ **106-12. To appoint secretary and other officials.**—The Commissioner of Agriculture shall appoint a secretary and prescribe his duties, and shall appoint such employees as may be necessary to the efficient prosecution of the duties of the Department of Agriculture. He shall, subject to the approval of a majority of the Board, appoint heads of divisions and their assistants. (1901, c. 479, s. 4; Rev., s. 3939; 1913, c. 202; C. S., s. 4676.)

§ **106-13. To investigate purchases, sources, and manufacture of fertilizer.**—The Commissioner of Agriculture shall investigate all complaints made by purchasers of fetilizers, and render such services as he may be able in bringing about an adjustment and satisfactory settlement of such complaints. It shall be his duty to ascertain as near as may be the actual cost of blood tankage, fish scrap, nitrate of soda, cottonseed meal, and other materials from which ammonia or nitrogen is obtained; the cost of all phosphate rock, together with a description of the treatment with acids, the grinding and general manufacture of acid phosphate, and the actual cost thereof as near as may be, and to communicate with dealers, both in this country and in Germany, as to the cost of muriate of potash, kainit, and other sources of potash, and to publish the same in the Bulletin; but he shall not expose to the public the name of any manufacturer in this State who may give him information on this subject, nor shall he divulge any information concerning the private business of any corporation or company manufacturing fertilizers solely in this State: Provided, such corporation or company is not a part or branch of any trust or combination. He shall also make and publish in every fertilizer bulletin a price list of the market value of all the materials of which fertilizers are made, and revise the same as often as may be necessary. (1901, c. 479, s. 4; Rev., s. 3940; C. S., s. 4677.)

§ **106-14. To establish regulations for transportation of livestock.**—The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture, shall promulgate and enforce such rules and regulations as may be necessary for the proper transporting of livestock by motor vehicle, and may require a permit for such vehicles if it becomes necessary in order to prevent the spread of animal diseases. This section shall not apply to any county having a local law providing for the vaccination of hogs against cholera. (1937, c. 427, ss. 1, 2.)

Part 3. Powers and Duties of Department and Board.

§ **106-15. Agricultural research station and branch stations.**—The work of investigation in agriculture required in this chapter may be designated by the Board of Agriculture as an agricultural research station, and the four research farms now in operation be and the same are hereby designated and established as branch research stations, to be conducted as at present under the auspices of the Board of Agriculture and out of its funds. (1907, c. 876, s. 5; C. S., s. 4682; 1955, c. 276, s. 1.)

§ **106-16. Purchase and sale of research farms; use of proceeds.**—The Board of Agriculture is authorized to sell, at its discretion, any lands which the State may now own or may hereafter acquire for the purpose of conducting research farms. The Board is also authorized to purchase additional lands to be used for the purpose of conducting research farms at such place or places as in the discretion of the Board may seem expedient. No such sales or purchases shall be made except upon the approval of the Governor and Council of State upon the recommendation of the Advisory Budget Commission. (1909, c. 97; 1917, c. 45; C. S., s. 4683; 1953, c. 1337; 1955, c. 276, s. 2.)

§ **106-17. Acquisition of research farm.**—The Department of Agriculture is hereby authorized and empowered to acquire by purchase, gift, donation, or lease, a tract or boundary of land of not less than one hundred acres in the sand-hill section of North Carolina, and in northeastern North Carolina composed of the counties of Camden, Chowan, Currituck, Gates, Pasquotank and Perquimans, to be developed and used as a "research farm" for the purposes of work in investigation in agriculture.

Such "research farm" when acquired and established shall be operated, managed and controlled as other "research farms" in the State. (1927, c. 182, ss. 1, 2; 1955, c. 276, s. 2.)

§ **106-18. Peanut research farm.** — The Department of Agriculture is hereby authorized and directed to purchase, establish and operate a research farm in some suitable place in the peanut section of eastern North Carolina for the purpose of studying the growing of peanuts, looking toward the improvement of seed, fertilizer, the control of disease, through experiments, and such other matters pertaining to the growth and improvement of the quality of peanuts. The said research farm to be purchased and established in time for operation not later than January 1, 1938. In doing this work the Department of Agriculture is authorized to make such reasonable expenditures for establishing and operating such peanut research farm as may be necessary for its proper conduct and in the same way as is now being done for the other research farms in the State. The research farm shall be established, operated and controlled by the Department of Agriculture as the other research farms for the study of other farm crops. (1937, c. 218; 1955, c. 276, s. 2.)

§ **106-19. State Chemist; duties of office.** — The Department of Agriculture shall employ an analyst or State Chemist skilled in agricultural chemistry, and such assistants as may be necessary. It shall be the duty of the State Chemist to analyze such fertilizers and products as may be required by this Department, and to aid as far as practicable in suppressing fraud in the sale of commercial fertilizers. He shall also, under the direction of the Department, analyze for citizens of the State such samples of ores, minerals, mineral and potable waters, soils, marls and phosphates as may be deemed by the Department of benefit to the development of the material interest of the State, when such samples are supplied under rules by the Department, and he shall carry on such other investigations as the Department may direct. He shall make regular reports to the Department of all analyses, assays, and experiments made, which shall be furnished when deemed needful to such newspapers as will publish the same. (1901, c. 479, s. 11; Rev., s. 3941; C. S., s. 4684.)

§ **106-20. Inoculating culture for leguminous crops.** — The Board of Agriculture is hereby authorized to manufacture inoculating culture for leguminous crops and distribute it to the citizens of the State applying therefor at cost, the expense of manufacture and distribution to be paid for out of the receipts of the Department of Agriculture. (Ex. Sess. 1913, c. 43; C. S., s. 4685.)

§ **106-21. Timber conditions to be investigated and reported.**—The Department of Agriculture shall investigate and report upon the conditions of the timber in North Carolina, and recommend such legislation as will promote the growth thereof and preserve the same. (1901, c. 479, s. 13; Rev., s. 3942; C. S., s. 4686.)

§ **106-22. Joint duties of Commissioner and Board.** — The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture shall:

(1) General.—Investigate and promote such subjects relating to the improvement of agriculture, the beneficial use of commercial fertilizers and composts, and for the inducement of immigration and capital as he may think proper; but he is especially charged:

(2) Commercial Fertilizers.—With such supervision of the trade in commercial fertilizers as will best protect the interests of the farmers, and shall report to solicitors and to the General Assembly informa-

tion as to the existence or formation of trusts or combinations in fertilizers or fertilizing materials which are or may be offered for sale in this State, whereby the interests of the farmers may be injuriously affected, and shall publish such information in the Bulletin of the Department;

(3) Cattle and Cattle Diseases.—With investigations adapted to promote the improvement of milk and beef cattle, and especially investigations relating to the diseases of cattle and other domestic animals, and shall publish and distribute from time to time information relative to any contagious diseases of stock, and suggest remedies therefor, and shall have power in such cases to quarantine the infected animals and to regulate the transportation of stock in this State, or from one section of it to another, and may cooperate with the United States Department of Agriculture in establishing and maintaining cattle districts or quarantine lines, to prevent the infection of cattle from splenic or Spanish fever. Any person willfully violating such regulations shall be liable in a civil action to any person injured, and for any and all damages resulting from such conduct, and shall also be guilty of a misdemeanor;

(4) Honey and Bee Industry.—With investigations adapted to promote the improvement of the honey and bee industry in this State, and especially investigations relating to the diseases of bees, and shall publish and distribute from time to time information relative to such diseases, and such remedies therefor, and shall have power in such cases to quarantine the infected bees and to control or eradicate such infections and to regulate the transportation or importation into North Carolina from any other state or country of bees, honey, hives, or any apiary equipment, or from one section of the State to another, and may cooperate with the United States Department of Agriculture in establishing and maintaining quarantine lines or districts. The Commissioner of Agriculture, by and with the consent and advice of the Board of Agriculture, shall have power to make rules and regulations to carry out the provisions of this section; and in event of failure to comply with any such rules and regulations, the Commissioner of Agriculture or his duly authorized agent is authorized to confiscate and destroy any infected bees and equipment and any bees and/or used apiary equipment moved in violation of these regulations;

(5) Insect Pests.—With investigations relative to the ravages of insects and with the dissemination of such information as may be deemed essential for their abatement, and making regulations for destruction of such insects. The willful violation of any of such regulations by any person shall be a misdemeanor;

(6) New Agricultural Industries. — With investigations and experiments directed to the introduction and fostering of new agricultural industries, adapted to the various climates and soils of the State, especially the culture of truck and market gardens, the grape and other fruits;

(7) Drainage and Irrigation; Fertilizer Sources.—With the investigation of the subject of drainage and irrigation and publication of information as to the best methods of both, and what surfaces, soils, and locations may be most benefited by such improvements; also with the collection and publication of information in regard to localities, character, accessibility, cost, and modes of utilization of native mineral and domestic sources of fertilizers, including formulae for composting adapted to the different crops, soils, and materials;

(8) Farm Fences. — With the collection of statistics relating to the subject

of farm fences, with suggestions for diminishing their cost, and the conditions under which they may be dispensed with altogether;

(9) Sales of Fertilizers, Seeds, and Food Products. — With the enforcement and supervision of the laws which are or may be enacted in this State for the sale of commercial fertilizers, seeds and food products, with the authority to make regulations concerning the same;

(10) Inducement of Capital and Immigration. — With the inducement of capital and immigration by the dissemination of information relative to the advantages of soil and climate and to the natural resources and industrial opportunities offered in this State, by the keeping of a land registry and by the publication of descriptions of agricultural, mineral, forest, and trucking lands which may be offered the Department for sale; which publication shall be in tabulated form, setting forth the county, township, number of acres, names and addresses of owners, and such other information as may be needful in placing inquiring homeseekers in communication with landowners; and he shall publish a list of such inquiries in the Bulletin for the benefit of those who may have land for sale;

(11) Diversified Farming. — With such investigations as will best promote the improvement and extension of diversified farming, including the rotation of crops, the raising of home supplies, vegetables, fruits, stock, grasses, etc.;

(12) Farmers' Institutes.—With the holding of farmers' institutes in the several counties of the State, as frequently as may be deemed advisable, in order to instruct the people in improved methods in farming, in the beneficial use of fertilizers and composts, and to ascertain the wants and necessities of the various farming communities; and may collect the papers and addresses made at these institutes and publish the same in pamphlet form annually for distribution among the farmers of the State. He may secure such assistants as may be necessary or beneficial in holding such institutes;

(13) Publication of Bulletin. — The Commissioner shall publish bulletins which shall contain a list of the fertilizers and fertilizing materials registered for sale each year, the guaranteed constituents of each brand, reports of analyses of fertilizers, the dates of meeting and reports of farmers' institutes and similar societies, description of farm buildings suited to our climate and needs, reports of interesting experiments of farmers, and such other matters as may be deemed advisable. The Department may determine the number of bulletins which shall be issued each year;

(14) Reports to Legislature.—He shall transmit to the General Assembly at each session a report of the operations of the Department with suggestions of such legislation as may be deemed needful;

(15) State Museum.—He shall keep a museum or collection to illustrate the cultural and other resources and the natural history of the State. (1901, c. 479, s. 4; Rev., ss. 3294, 3724, 3944; 1917, c. 16; C. S., s. 4688; 1939, c. 173.)

Constitutionality. — Legislation of this character has been upheld by well considered decisions in this and other jurisdictions. Morgan v. Stewart, 144 N.C. 424, 57 S. E. 149 (1907).

The authority to make administrative rules is not a delegation of legislative power, and such rules do not become legislation, because violations thereof are punished as "public offenses." State v. Southern Ry., 141 N.C. 846, 54 S.E. 294 (1906).

Cattle and Cattle Diseases. — The State Board of Agriculture has authority to make and enforce regulations for the quarantine of cattle and to prevent their transportation in view of preventing the spreading of contagious diseases. And an owner permitting cattle to run at large in a no-fence county who willfully allows cattle to stray across the line is guilty of a violation of the act. State v. Garner, 158 N.C. 630, 74 S.E. 458 (1912).

The third subdivision of this section confers power upon the Commissioner to make regulations prohibiting the transportation of cattle. State v. Southern Ry., 141 N.C. 846, 54 S.E. 294 (1906).

The provision to get rid of the ticks on cattle and prevent infection is a reasonable and valid regulation. State v. Hodges, 180 N.C. 751, 105 S.E. 417 (1920).

Judicial Notice of Quarantined District.—Where the quarantine regulations of the United States Department of Agriculture, relating to the transportation of cattle, which were adopted by the State Board of Agriculture, provided that no cattle originating in the quarantined district as therein described should be moved into "that part of Burke south of the Catawba River," the court judicially knows that a shipment of cattle from Burlington to Morganton has been across the line fixed as a quarantine line. State v. Southern Ry., 141 N.C. 846, 54 S.E. 294 (1906).

Part 4. Cooperation of Federal and State Governments in Agricultural Work.

§ **106-23. Legislative assent to Adams Act for experiment station.**—Legislative assent be and the same is hereby given to the purpose of an Act of Congress approved March sixteenth, one thousand nine hundred and six, entitled "An Act to provide for an increased annual appropriation for agricultural experiment stations, and regulating the expenditure thereof," known as the Adams Act, and the money appropriated by this Act be and the same is hereby accepted on the part of the State for the use of the agricultural experiment station, and the whole amount shall be used for the benefit of the said agricultural experiment station, in accordance with the Act of Congress making appropriations for agricultural experiment stations and governing the expenditure thereof. (1907, c. 793; C. S., s. 4689.)

Editor's Note.—Session Laws 1955, c. 276, s. 1, changed "agricultural experiment station," as used in § 106-15, to read "agricultural research station."

Part 5. Cooperation between Department and United States Department of Agriculture, and County Commissioners.

§ **106-24. Collection and publication of information relating to agriculture; cooperation.**—The Department of Agriculture shall collect, compile, systematize, tabulate, and publish statistical information relating to agriculture. The said Department is authorized to cooperate with the United States Department of Agriculture and the several boards of county commissioners of the State, to accomplish the purpose of §§ 106-24 to 106-26. (1921, c. 201, s. 1; C. S., s. 4689(a); 1941, c. 343.)

Cited in Nantahala Power & Light Co. v. Clay County, 213 N.C. 698, 197 S.E. 603 (1938).

§ **106-25. Department to furnish report books or forms for procuring and tabulating information; appointment and duties of persons collecting and compiling information; information confidential.**—The said Department shall annually provide and submit report books or forms to the person appointed by the board of county commissioners of the several counties of the State to collect and compile the statistical information required by §§ 106-24 to 106-26. The board of county commissioners may appoint any person to collect such information. The person so appointed shall serve at the will of the county commissioners and shall be paid such compensation for such services as may be deemed proper. Such report books or forms shall be furnished the person so appointed before he enters upon his duties. It shall be the duty of each person so appointed to fill out or cause to be filled out in the report books or forms, herein provided for and received by him, authentic information required to be tabulated therein, and, upon completion of such tabulation, he shall return and deliver the said books or forms to the board of county commissioners of his county, within ten days after the time prescribed by law for securing the tax lists of his county. The person so appointed shall carefully check said books or forms for the purpose of determining whether or not at least ninety percent (90%) of the tracts of land of such county are acceptably reported on in such report books or forms. Upon the receipt of the report books or forms properly filled out in accordance with §§ 106-24 to 106-26, the board of county commissioners of each county in the State shall, within ten days after receipt thereof, inspect and transmit or deliver such report books or forms to the Department of Agriculture. The information required in §§ 106-24 to 106-26 shall be held confidential by all persons having any connections therewith and by the Department of Agriculture. No information shall be required hereunder on land tracts consisting of less than three acres. (1921, c. 201, s. 2; C. S., s. 4689(b); 1941, c. 343; 1947, c. 540; 1949, c. 1273, s. 1; 1951, c. 1014, s. 1.)

§ **106-26. Compensation for making reports; examination of report books, etc., by Department of Agriculture.**—In order to encourage maximum cooperation and efficiency, the Department of Agriculture shall pay to the county commissioners of the various counties of the State from appropriations made to the Department of Agriculture, the sum of twenty cents (20¢) per acceptable report received by the Department of Agriculture in accordance with the provisions of §§ 106-24 to 106-26: Provided, however, that no such payment shall be made for any report from any township which does not cover acceptably at least ninety percent (90%) of the tracts of land within such townships. In all those cases where the report covers less than eighty percent (80%) of the tracts of land in a township, the Department of Agriculture shall withhold from the amount due the county for furnishing such reports the sum of twenty cents (20¢) for each farm report shortage, and shall further deduct therefrom the sum of two dollars ($2.00) for each unauthenticated report. Upon request, all report books or forms which are not complete in accordance with the provisions of §§ 106-24 to 106-26 shall be returned to the county board of commissioners or person charged with the duty of supervising or compiling the statistical survey information, in order that the same may be properly completed to comply with the provisions of this part. (1921, c. 201, s. 3; C. S., s. 4689(c); 1941, c. 343; 1949, c. 1273, s. 2; 1951, c. 1014, s. 2.)

§ **106-26.1. Cooperation of county farm and home demonstration agents and vocational teachers.**—It shall be the duty of the county farm and home demonstration agents and vocational teachers to cooperate with the persons designated to obtain the information required by G.S. 106-25 and 106-26, and particularly to inform the farmers as to the advisability and necessity for obtaining the information necessary to carry out the purposes enumerated in G.S. 106-25 and 106-26. (1951, c. 1014, s. 3.)

Article 2.

North Carolina Fertilizer Law of 1947.

§§ **106-27 to 106-50**: Superseded by §§ 106-50.1 to 106-50.22.

Editor's Note.—The superseded sections were codified from Public Acts 1933, c. 334, as amended by Public Acts 1937, c. 430, Public Acts 1941, c. 368, Session Laws 1943, c. 652, and Session Laws 1945, c. 287. Prior to the enactment of the superseding sections, this article was entitled "North Carolina Fertilizer Law of 1933."

§ **106-50.1. Title.**—This article shall be known as the "North Carolina Fertilizer Law of 1947." (1947, c. 1086, s. 1.)

Editor's Note.—Session Laws 1947, c. 1086, which rewrote this article, has been codified as §§ 106-50.1 to 106-50.22.

§ 106-50.2. Enforcing official.—This article shall be administered by the Commissioner of Agriculture of the State of North Carolina, hereinafter referred to as the "Commissioner." (1947, c. 1086, s. 2.)

§ 106-50.3. Definitions.—When used in this article:

(1) The term "brand name" means the name under which any individual mixed fertilizer or fertilizer material is offered for sale and may include a number, trademark, or other designation.

(2) The term "commercial fertilizer" includes both mixed fertilizer and/or fertilizer materials.

(3) The term "contractor" means any person, firm, corporation, wholesaler, retailer, distributor or any other person who for hire or reward applies commercial fertilizer to the soil of a consumer; provided that this shall not apply to any consumer applying commercial fertilizer to only the land that he owns or to which he otherwise holds rights, for the production of his own crops.

(4) The term "distributor" means any person who offers for sale, sells, barters, or otherwise supplies mixed fertilizers or fertilizer materials.

(5) The term "fertilizer material" means any substance containing nitrogen, phosphoric acid, potash, or any other recognized plant food element or compound which is used primarily for its plant food content or for compounding mixed fertilizers. Not included in this definition are all types of unmanipulated animal and vegetable manures and mulches for which no plant food content is claimed.

(6) The term "fortified mulch" means substances composed primarily of plant remains or mixtures of such substances to which plant food has been added and for which plant food is claimed.

In "fortified mulches" the minimum percentages of total nitrogen, available phosphoric acid, and soluble or available potash are to be guaranteed and the guarantee stated in multiples of quarter (.25) percentages; provided, however, that such percentages shall not exceed one percent respectively subject to the same limits and tolerances set forth in this chapter.

(7) The term "grade" means the minimum percentage of total nitrogen, available phosphoric acid, and soluble or available potash stated in the order given in this paragraph and, when applied to mixed fertilizers, shall be in whole numbers only.

(8) The term "manipulated manures" means substances composed primarily of excreta, plant remains or mixtures of such substances which have been processed in any manner, including the addition of plant foods, drying, grinding and other means.

In "manipulated manures" the minimum percentages of total nitrogen, available phosphoric acid, and soluble or available potash are to be guaranteed, and the guarantee stated in multiples of half (.50) percentages.

(9) The term "manufacturer" means a person engaged in the business of preparing, mixing, or manufacturing commercial fertilizers; and the term "manufacture" means preparing, mixing, or manufacturing.

(10) The term "mixed fertilizers" means products resulting from the combination, mixture, or simultaneous application of two or more fertilizer materials for use in or claimed to have value in promoting plant growth by a manufacturer or contractor.

(11) The term "mulch" means substances composed primarily of plant remains or mixtures of such substances to which no plant food has been added and for which no plant food is claimed.

(12) The term "official sample" means any sample of commercial fertilizer

taken by the Commissioner or his authorized agent according to the methods prescribed in subsection (b) of § 106-50.7.

(13) The term "percent" or "percentage" means the percentage by weight.
(14) The term "person" includes individuals, partnerships, associations, firms and corporations.
(15) The term "sell" or "sale" includes exchange.
(16) The term "specialty fertilizer" means any fertilizer distributed primarily for use on noncommercial crops such as garden, lawns, shrubs, and flowers; and may include fertilizers used for research or experimental purposes.
(17) The term "ton" means a net ton of two thousand pounds avoirdupois.
(18) The term "unmanipulated manures" means substances composed primarily of excreta, plant remains or mixtures of such substances which have not been processed in any manner.
(19) Words importing the singular number may extend and be applied to several persons or things, and words importing the plural number may include the singular. (1947, c. 1086, s. 3; 1951, c. 1026, ss. 1, 2; 1955, c. 354, s. 1; 1959, c. 706, ss. 1, 2; 1961, c. 66, ss. 1, 2.)

§ 106-50.4. Registration of brands and licensing of manufacturers and contractors.—(a) Each brand of commercial fertilizer, manipulated manure and fortified mulch shall be registered before being offered for sale, sold, or distributed in this State. The application for registration shall be submitted in duplicate to the Commissioner on forms furnished by the Commissioner, and shall be accompanied by a remittance of $2.00 per brand and grade as a registration fee. Upon approval by the Commissioner a copy of the registration shall be furnished to the applicant. All registrations expire on July 1st of each year. The application shall include the following information:

(1) The name and address of the person guaranteeing registration.
(2) The brand.
(3) The grade.
(4) The guaranteed analysis showing the minimum percentage of plant food in the following order and form; provided that the Commissioner of Agriculture may vary this order and form for small packages of twenty-five (25) pounds and less:

a. In mixed fertilizers (other than those branded for tobacco):

Total nitrogen .... —— percent
(Optional) water insoluble nitrogen .... —— percent
percentage of total in multiples of five.
Available phosphoric acid .... —— percent
Soluble or available potash .... —— percent
Whether the fertilizer is acid-forming or nonacid forming. The potential basicity or acidity expressed as equivalent of calcium carbonate in mulitples of five percent (or one hundred pounds per ton) only.

b. In mixed fertilizer (branded for tobacco):

Field Fertilizer

Total nitrogen .... —— percent
(Optional) nitrogen in the form of nitrate ...... —— percent
percentage of total in multiples of five.
Water insoluble nitrogen .... —— percent
percentage of total in multiples of five.
Available phosphoric acid .... —— percent
Soluble or available potash .... —— percent
Maximum chlorine .... —— percent
Total magnesium oxide .... —— percent

Plant Bed Fertilizer

Total nitrogen .... —— percent

(Optional) nitrogen in the form of nitrate ...... —— percent
percentage of total in multiples of five.

(Optional) water insoluble nitrogen .... —— percent
percentage of total in multiples of five.

Available phosphoric acid .... —— percent

Soluble or available potash .... —— percent

Maximum chlorine .... —— percent

Total magnesium oxide .... —— percent

All fertilizer branded for tobacco must contain magnesium equivalent to a minimum of two percent magnesium oxide for field fertilizer, and one percent magnesium oxide for plant bed fertilizer. Whether the fertilizer is acid-forming or nonacid-forming.

The potential basicity or acidity expressed as equivalent of calcium carbonate in multiples of five percent (or one hundred pounds per ton) only.

c. In fertilizer materials (if claimed):

Total nitrogen .... —— percent

Available phosphoric acid .... —— percent

In the case of bone, tankage, and other organic phosphate materials on which the chemist makes no determination of available phosphoric acid, the total phosphoric acid shall be guaranteed: Provided, that unacidulated mineral phosphatic materials and basic slag shall be guaranteed as to both total and available phosphoric acid and the degree of fineness.

Soluble or available potash .... —— percent

Other recognized plant food .... —— percent

d. In manipulated manures:

Total nitrogen .... —— percent

Available phosphoric acid .... —— percent

Soluble or available potash .... —— percent

(The manures from which nitrogen, phosphoric acid, and potash are derived.)

e. In fortified mulches:

Total nitrogen .... —— percent

Available phosphoric acid .... —— percent

Soluble or available potash .... —— percent

(Material or materials of which the mulch is composed.)

(5) The sources from which the nitrogen, phosphoric acid, and potash are derived.

(6) Magnesium (Mg) or magnesium oxide (MgO), calcium (Ca) or calcium oxide (CaO), and sulfur (S) may be claimed as secondary plant foods in all mixed fertilizers, but when one or more of these is so claimed the minimum percentage of total magnesium (Mg) or total magnesium oxide (MgO), total calcium (Ca) or total calcium oxide (CaO), and total sulfur (S), as applicable, shall be guaranteed; excepting that the sulfur guarantee for fertilizers branded for tobacco shall be both the maximum and the minimum percentages.

(7) Borax may be claimed as an ingredient of mixed fertilizers. If claimed, it shall be guaranteed in terms of pounds of borax ($Na_2B_4O_7.10H_2O$) per 100 pounds of fertilizer and in increments of ¼, ½, and multiples of ½ pound per 100 pounds of fertilizer. The guarantee will be considered both a minimum and a maximum guarantee. The analysis

guarantee shall be on a separate tag as prescribed by the Commissioner.

(8) Additional plant food elements, compounds, or classes of compounds, determinable by chemical control methods, may be guaranteed only by permission of the Commissioner by and with the advice of the director of the experiment station. When any such additional plant food elements, compounds, or classes of compounds are included in the guarantee, they shall be subject to inspection and analysis in accordance with the methods and regulations that may be prescribed by the Commissioner. The Commissioner shall also fix penalties for failure to fulfill such guarantees.

(9) In no case, except in the case of unacidulated mineral phosphates and/or basic slag unmixed with other materials shall both the terms total phosphoric acid and available phosphoric acid be used in the same statement of analysis.

(b) The distributor of any brand and grade of commercial fertilizer shall not be required to register the same if it has already been registered under this article by a person entitled to do so and such registration is then outstanding.

(c) The grade of any brand of mixed fertilizer shall not be changed during the registration period, but the guaranteed analysis may be changed in other respects and the sources of materials may be changed: Provided, prompt notification of such change is given to the Commissioner and the change is noted on the container or tag: Provided, further, that the guaranteed analysis shall not be changed if it, in any way, lowers the quality of the fertilizer: Provided, further, that if at a subsequent registration period, the registrant desires to make any change in the registration of a given brand and grade of fertilizer, said registrant shall notify the Commissioner of such change 30 days in advance of such registration; that if the Commissioner, after consultation with the director of the agricultural experiment station decides that such change materially lowers the crop producing value of the fertilizer, he shall notify the registrant of his conclusions, and if the registrant registers the brand and grade with the proposed changes, then the Commissioner shall give due publicity to said changes through the Agricultural Review and/or by such other means as he may deem advisable.

(d) Any person, firm or corporation wishing to become a fertilizer manufacturer or contractor, as defined in this article, shall before engaging in such business secure a license from the Commissioner of Agriculture. Such person, firm or corporation shall make application for such license on forms to be furnished by the Commissioner submitting such information as to his proposed operation as the Commissioner may prescribe. Such license shall be renewable annually on the first day of July. Such license may be revoked for a violation of any provisions of this article, or of any rule or regulation adopted by the Board of Agriculture. (1947, c. 1086, s. 4; 1949, c. 637, s. 1; 1951, c. 1026, ss. 3-6; 1959, c. 706, ss. 3-5; 1961, c. 66, ss. 3, 4.)

Editor's Note.—Session Laws 1955, c. 276, s. 1, changed "agricultural experiment station," as used in § 106-15, to read "agricultural research station."

§ 106-50.5. Labeling. — (a) Any commercial fertilizer offered for sale, sold, or distributed in this State in bags, barrels, or other containers shall have placed on or affixed to the container the net weight and the data in written or printed form, required by subsection (a), with the exception of subdivision (5), of § 106-50.4 printed either (i) on tags to be affixed to the end of the package or (ii) directly on the package. In case the brand name appears on the package, the grade shall also appear on the package, immediately preceding the guaranteed analysis or as a part of the brand name. The size of the type of numerals indicating the grade on the container shall not be less than 2 inches in height for containers of 100 pounds or more; not less than 1 inch for containers of 50 to 99 pounds; and not less than ½ inch for packages of less than 50 pounds. In case of fertilizers sold in containers on which the brand or other designations of the distributor do not appear, the grade must appear in a manner prescribed by the Commissioner on tags attached to the container.

(b) If transported in bulk, the net weight and the data, in written or printed form, as required by subsection (a), with the exception of subdivision (5), of § 106-50.4, shall accompany delivery and be supplied to the purchaser.

(c) If mixed fertilizer is sold or intended to be sold in bags weighing more than 100 pounds, each bag must have a tag attached thereto, of a type approved by the Commissioner, showing the grade of the fertilizer contained therein. Such tag must be attached between the ears of each bag, or in the case of a machine sewed bag, approximately at the center of the sewed end of the bag: Provided, that in lieu of such tag the grade of the fertilizer may be printed on the end of the bag in readily legible numerals. (1947, c. 1086, s. 5; 1949, c. 637, s. 2; 1955, c. 354, s. 2.)

Editor's Note. — The cases cited below were decided under prior law.

Warranty of Contents. — Manufacturers and vendors of commercial fertilizers impliedly warrant that they contain the ingredients specified on the tags placed on the bags, according to the requirements of the statute. Swift & Co. v. Aydlett, 192 N.C. 330, 135 S.E. 141 (1926).

Compliance with Statute Warranted.— When plaintiffs, as manufacturers, dealers or agents, sold to defendant commercial fertilizers, they must be held to have warranted that they had complied with the statute, and that the articles delivered, as commercial fertilizers were truthfully branded as required by the statute. Swift v. Etheridge, 190 N.C. 162, 129 S.E. 453 (1925).

Note for Purchase Price of Fertilizers Not Complying with Statute.—If the contents of the bags or packages delivered to defendant by plaintiffs were not, in fact commercial fertilizers, of the analysis guaranteed on each bag or package, as required, there was no consideration for the note given for the purchase price of the articles bought by defendant, and plaintiffs are not entitled to recover on said note. Swift v. Etheridge, 190 N.C. 162, 129 S.E. 453 (1925).

The rule of caveat emptor, as applied at common law in the sale of articles of personal property, is not applicable to the sale of commercial fertilizers in this State. Swift v. Etheridge, 190 N.C. 162, 129 S.E. 453 (1925); Swift & Co. v. Aydlett, 192 N.C. 330, 135 S.E. 141 (1926).

The burden of proof is upon the manufacturer to show, in an action against a purchaser for the purchase price, that the goods were at least merchantable, and that the ingredients used in their manufacture were in accordance with the specifications upon the tags placed on the bags under the requirements of the statute. Swift & Co. v. Aydlett, 192 N.C. 330, 135 S.E. 141 (1926).

A waiver by the purchaser of any demand for damages on account of any deficiencies in the ingredients of fertilizers, except such as may be ascertained in the manner specified in the statute, is valid and enforceable. Armour Fertilizer Works v. Aiken, 175 N.C. 399, 95 S.E. 657 (1918).

§ **106-50.6. Inspection fees.**—(a) For the purpose of defraying expenses on the inspection and of otherwise determining the value of commercial fertilizers in this State, there shall be paid to the Department of Agriculture a charge of twenty-five cents (25¢) per ton on all commercial fertilizers in packages of more than five pounds of such commercial fertilizer. On individual packages of five pounds or less there shall be paid in lieu of the tonnage fee an annual registration fee of twenty-five dollars ($25.00) for each brand offered for sale, sold, or distributed; provided that any per annum (fiscal) tonnage of any brand sold in excess of one hundred tons may be subject to the charge of twenty-five cents (25¢) per ton as provided herein. The Commissioner, with the advice and consent of the Board of Agriculture is hereby empowered to adopt such regulations as will insure the enforcement of this law. Whenever any manufacturer of commercial fertilizer shall have paid the charges required by this section his goods shall not be liable to further tax, whether by city, town, or county; provided, this shall not exempt the commercial fertilizers from an ad valorem tax.

(b) Reporting System.—Each manufacturer, importer, jobber, firm, corporation or person who distributes commercial fertilizers in this State shall make application to the Commissioner of Agriculture for a permit to report the tonnage of commercial fertilizer sold and shall pay to the North Carolina Department of Agriculture an inspection fee of twenty-five cents (25¢) per ton. The Commissioner of Agriculture is authorized to require each such distributor to keep such records as may be necessary to indicate accurately the tonnage of commercial fertilizers sold in the State, and as are satisfactory to the Commissioner of Agriculture. Such records shall be available to the Commissioner, or his duly authorized representative, at any and all reasonable hours for the purpose of making such examination as is necessary to verify the tonnage statement and the inspection fees paid. Each and every distributor shall report the tonnage sold monthly under oath and on forms furnished by the Commissioner. Such reports shall be made and inspection fee shall be due and payable monthly on the tenth day of each month covering the tonnage and kind of commercial fertilizers sold during the past month. If the report is not filed and the inspection fee paid by the tenth day following the date due or if the report of tonnage be false, the Commissioner may revoke the permit, and if the inspection fee be unpaid after the fifteen-day grace period, the amount shall bear a penalty of ten percent (10%) which shall be added to the inspection fee due and shall constitute a debt and become the basis of judgment against the securities or bond which may be required. In order to guarantee faithful performance with the provisions of this subsection each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with the Commissioner cash in the amount of one thousand dollars ($1,000.00) or securities acceptable to the Commissioner of a value of at least one thousand dollars ($1,000.00) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The Commissioner shall approve all such securities and bonds before acceptance. (1947, c. 1086, s. 6; 1949, c. 637, s. 3; 1959, c. 706, ss. 6, 7.)

Editor's Note. — The cases cited below were decided under a prior law.

Action to Secure Tax Wrongfully Collected.—The Board of Agriculture is a department of the State government, and an action against it to recover money alleged to have been wrongfully collected by it as a license tax cannot be maintained, the State not having given its consent to be sued in that respect. Lord & Polk Chem. Co. v. Board of Agriculture, 111 N.C. 135, 15 S.E. 1032 (1892).

Property Tax.—The statute will not be so construed as to relieve manufacturers of fertilizers or fertilizing material, paying this inspection tax, from the payment of property tax required by the Constitution. Pocomoke Guano Co. v. Biddle, 158 N.C. 212, 73 S.E. 996 (1912).

§ **106-50.7. Sampling, inspection and testing.**—(a) It shall be the duty of the Commissioner, who may act through his authorized agent, to sample, inspect, make analysis of, and test commercial fertilizers offered for sale, sold, or distributed within the State at such time and place and to such an extent as he may deem necessary to determine whether such commercial fertilizers are in compliance with the provisions of this article. The Commissioner, individually or through his agent, is authorized to enter upon any public or private premises during regular business hours in order to have access to commercial fertilizers subject to the provisions of this article and the rules and regulations thereto.

(b) The methods of sampling shall be as follows:

(1) For the purposes of analysis by the Commissioner or his duly authorized chemists and for comparison with the guarantee supplied to the Commissioner in accordance with §§ 106-50.4 and 106-50.5, the Commissioner, or any official inspector duly appointed by him, shall take an official sample of not less than one pound from containers of commercial fertilizer. No sample shall be taken from less than five containers. If the lot comprises five (5) or more containers, portions shall

be taken from each one up to a total of ten (10) containers. If the lot comprises from ten (10) to one hundred (100) containers, portions shall be taken from ten (10) containers. Of lots comprising more than one hundred (100) containers, portions shall be taken from ten (10) percent of the total number of containers.

(2) In sampling commercial fertilizers, in bulk, either in a factory or a car, at least ten portions shall be drawn and these from different places so as fairly to represent the pile or car lot.

(3) In sampling, a core sampler shall be used that removes a core from a bag or other package from top to bottom, and the cores taken shall be mixed on clean oil cloth or paper, and if necessary shall be reduced after thoroughly mixing, by quartering, to the quantity of sample required. The composite sample taken from any lot of commercial fertilizer under the provision of this subdivision shall be placed in a tight container and shall be forwarded to the Commissioner with proper identification marks.

(4) The Commissioner may modify the provisions of this section to bring them into conformity with any changes that may hereafter be made in the official methods of and recommendations for sampling commercial fertilizers which shall have been adopted by the Association of Official Agricultural Chemists or by the Association of American Fertilizer Control Officials. Thereafter, such methods and recommendations shall be used in all sampling done in connection with the administration of this article in lieu of those prescribed in subdivisions (1), (2), and (3) of this subsection.

(5) All samples taken under the provisions of this section shall be taken from original unbroken bags or containers, the contents of which have not been damaged by exposure, water or otherwise.

(6) The Commissioner shall refuse to analyze all samples except such as are taken under the provisions of this section and no sample unless so taken shall be admitted as evidence in the trial of any suit or action wherein there is called into question the value or composition of any lot of commercial fertilizer distributed under the provisions of this article.

(7) In the trial of any suit or action wherein there is called in question the value or composition of any lot of commercial fertilizer, a certificate signed by the fertilizer chemist and attested with the seal of the Department of Agriculture, setting forth the analysis made by the chemist of the Department of Agriculture, of any sample of said commercial fertilizer, drawn under the provisions of this section and analyzed by them under the provisions of the same, shall be prima facie proof that the lot of fertilizer represented by the sample was of the value and constituency shown by said analysis. And the said certificate of the chemist shall be admissible in evidence to the same extent as if it were his deposition taken in said action in the manner prescribed by law for the taking of depositions.

(c) The methods of analysis shall be those adopted as official by the Board of Agriculture and shall conform to sound laboratory practices as evidenced by methods prescribed by the Association of Official Agricultural Chemists of the United States. In the absence of methods prescribed by the Board, the Commissioner shall prescribe the methods of analysis.

(d) The result of official analysis of any commercial fertilizer which has been found to be subject to penalty shall be forwarded by the Commissioner to the registrant at least ten days before the report is submitted to the purchaser. If during that period no adequate evidence to the contrary is made available to the

Commissioner, the report shall become official. Upon request the Commissioner shall furnish to the registrant a portion of any sample found subject to penalty.

(e) Any purchaser or consumer may take and have a sample of mixed fertilizer or fertilizer material analyzed if taken in accordance with the following rules and regulations:

(1) At least five days before taking a sample, the purchaser or consumer shall notify the manufacturer or seller of the brand in writing, at his permanent address, of his intention to take such a sample and shall request the manufacturer or seller to designate a representative to be present when the sample is taken.

(2) The sample shall be drawn in the presence of the manufacturer, seller, or a representative designated by either party together with two disinterested freeholders; or in case the manufacturer, seller, or representative of either refuses or is unable to witness the drawing of such a sample, a sample may be drawn in the presence of three disinterested freeholders: Provided, any such sample shall be taken with the same type of sampler as used by the inspector of the Department of Agriculture in taking samples and shall be drawn, mixed, and divided as directed in subdivisions (1), (2), (3), (4), and (5) of subsection (b) of this section, except that the sample shall be divided into two parts each to consist of at least one pound. Each of these is to be placed into a separate, tight container, securely sealed, properly labeled, and one sent to the Commissioner for analysis and the other to the manufacturer. A certificate statement in a form which will be prescribed and supplied by the Commissioner must be signed by the parties taking and witnessing the taking of the sample. Such certificate is to be made and signed in duplicate and one copy sent to the Commissioner and the other to the manufacturer or seller of the brand sampled. The witnesses of the taking of any sample, as provided for in this section, shall be required to certify that such sample has been continuously under their observation from the taking of the sample up to and including the delivery of it to an express agency, a post office or to the office of the Commissioner.

(3) Samples drawn in conformity with the requirements of this section shall have the same legal status in the courts of the State, as those drawn by the Commissioner or any official inspector appointed by him as provided for in subsection (b) of this section.

(4) No suit for damages claimed to result from the use of any lot of mixed fertilizer or fertilizer material may be brought unless it shall be shown by an analysis of a sample taken and analyzed in accordance with the provisions of this article, that the said lot of fertilizer as represented by a sample or samples taken in accordance with the provisions of this section does not conform to the provisions of this article with respect to the composition of the mixed fertilizer or fertilizer material, unless it shall appear to the Commissioner that the manufacturer of the fertilizer in question has, in the manufacture of other goods offered in this State during such season, employed such ingredients as are outlawed by the provisions of this article, or unless it shall appear to the Commissioner that the manufacturer of such fertilizer has offered for sale during that season any kind of dishonest or fraudulent goods. (1947, c. 1086, s. 7; 1955, c. 354, s. 3.)

§ **106-50.8. Plant food deficiency.**—(a) The Commissioner in determining for administrative purposes whether any commercial fertilizer is deficient in plant food, shall be guided solely by the official sample as defined in subdivision (12) of § 106-50.3, and as provided for in subsections (b), (c), and (d) of § 106-50.7.

(b) If the analysis shall show that any commercial fertilizer falls short of the guaranteed analysis in any ingredient, a penalty shall be assessed in accordance with the following provisions:

(1) Total nitrogen: A penalty of three times the value of the deficiency, if such deficiency is in excess of 0.20 of one percent on goods that are guaranteed two percent; 0.25 of one percent on goods that are guaranteed three percent; 0.35 of one percent on goods that are guaranteed four percent; 0.40 of one percent on goods that are guaranteed five percent up to and including eight percent; 0.50 of one percent on goods guaranteed above eight percent up to and including thirty percent; and 0.75 of one percent on goods guaranteed over thirty percent.

(2) Available phosphoric acid: A penalty of three times the value of the deficiency, if such deficiency exceeds 0.40 of one percent on goods that are guaranteed up to and including ten percent; 0.50 of one percent on goods that are guaranteed above ten percent up to and including twenty-five percent; 0.75 of one percent on goods guaranteed over twenty-five percent.

(3) Soluble or available potash: A penalty of three times the value of the deficiency, if such deficiency is in excess of 0.20 of one percent on goods that are guaranteed two percent; 0.30 of one percent on goods that are guaranteed three percent; 0.40 of one percent on goods guaranteed four percent; 0.50 of one percent on goods guaranteed above four percent guaranteed above eight percent up to and including twenty percent; and 1.00 percent on goods guaranteed over twenty percent.

(4) Should the basicity or acidity as equivalent of calcium carbonate of any sample of fertilizer be found upon analysis to differ more than five percent (or one hundred pounds of calcium carbonate equivalent per ton) from the guarantee, then a penalty of fifty cents per ton for each fifty pounds calcium carbonate equivalent, or fraction thereof in excess of the one hundred pounds allowed, may be assessed and paid as under subsection (c) of this section.

(5) Chlorine: If the chlorine content of any lot of fertilizer branded for tobacco shall exceed the maximum amount guaranteed by more than 0.5 of one percent, a penalty shall be assessed equal to ten percent of the value of the fertilizer for each additional 0.5 of one percent of excess or fraction thereof.

(6) Water insoluble nitrogen: A penalty of three times the value of the deficiency shall be assessed, if such deficiency is in excess of 0.10 of one percent on goods guaranteed up to and including fifty-hundredths percent; 0.20 of one percent on goods guaranteed from five-tenths percent to one percent; 0.30 of one percent on goods guaranteed from one percent to two percent; 0.50 of one percent on goods guaranteed above two percent and up to and including five percent; and 1.00 percent on goods guaranteed over five percent.

(7) Nitrate nitrogen: A penalty of three times the value of the deficiency shall be assessed if the deficiency shall exceed 0.10 of one percent for goods guaranteed up to and including five-tenths percent; 0.15 of one percent for goods guaranteed from five-tenths to one percent; 0.25 of one percent for goods guaranteed from one to two percent; and 0.35 of one percent for goods guaranteed above two percent.

(8) Total magnesium or total magnesium oxide: If the magnesium content found falls as much as 0.30 of one percent below the minimum amount guaranteed, a penalty of fifty cents per ton shall be assessed for each 0.15 of one percent additional deficiency or fraction thereof. If the magnesium oxide content found falls as much as 0.50 of one percent

below the minimum amount guaranteed, a penalty of fifty cents per ton shall be assessed for each 0.50 of one percent additional deficiency or fraction thereof.

(9) Total calcium or total calcium oxide: If the calcium content found falls as much as 0.70 of one percent below the minimum amount guaranteed, a penalty of fifty cents per ton shall be assessed for each 0.35 of one percent additional deficiency or fraction thereof. If the calcium oxide content found falls as much as 1.00 percent below the minimum amount guaranteed, a penalty of fifty cents per ton shall be assessed for each 0.50 of one percent additional deficiency or fraction thereof.

(10) Sulfur: If the sulfur content is found to be as much as 1.50 percent below the minimum amount guaranteed in the case of all mixed fertilizers, including mixed fertilizers branded for tobacco, a penalty of fifty cents per ton for each 0.50 of one percent additional excess or fraction thereof, shall be assessed.

(11) Deficiencies or excesses in any other constituent or constituents covered under subdivisions (6) and (7), subsection (a), § 106-50.4 which the registrant is required to or may guarantee shall be evaluated by the Commissioner and penalties therefor shall be prescribed by the Commissioner.

(c) All penalties assessed under this section shall be paid to the consumer of the lot of fertilizer represented by the sample analyzed within three months from the date of notice by the Commissioner to the distributor, receipts taken therefor, and promptly forwarded to the Commissioner: Provided, that in no case shall the total assessed penalties exceed the commercial value of the goods to which it applies. If said consumers cannot be found, the amount of the penalty assessed shall be paid to the Commissioner who shall deposit the same in the Department of Agriculture fund, of which the State Treasurer is custodian. Such sums as shall be found to be payable to consumers on lots of fertilizer against which said penalties were assessed shall not be subject to claim by the consumer after twelve months from the date of assessment. (1947, c. 1086, s. 8; 1955, c. 354, s. 4.)

Editor's Note. — Subsection (b) (3) of this section is printed just as it appears in the authenticated copy of the act. However, there seems to be something missing between "percent" and "guaranteed" in the phrase "four percent guaranteed" near the end of the paragraph.

§ **106-50.9. Determination and publication of commercial values.**—For the purpose of determining the commercial values to be applied under the provisions of § 106-50.8, the Commissioner shall determine and publish annually the values per pound of nitrogen, phosphoric acid, and potash in commercial fertilizers in this State. The values so determined and published shall be used in determining and assessing penalties. (1947, c. 1086, s. 9.)

§ **106-50.10. Minimum plant food content.**—No superphosphate containing less than eighteen percent available phosphoric acid nor any mixed fertilizer in which the sum of the guarantees for the nitrogen, available phosphoric acid, and soluble or available potash totals less than twenty percent may be offered for sale, sold, or distributed in this State except for one grade of tobacco plant bed fertilizer in which the sum of the guarantees for total nitrogen, available phosphoric acid, and soluble or available potash shall not total less than sixteen percent and except for complete field fertilizer containing twenty-five percent or more of their nitrogen in water insoluble form of plant or animal origin, in which case the total nitrogen, available phosphoric acid, and soluble or available potash need not total more than eighteen percent. (1947, c. 1086, s. 10; 1951, c. 1026, s. 7.)

§ **106-50.11. Grade list.**—The Board of Agriculture, after a public hearing open to all interested parties, and upon approval by the director of the agricultural experiment station, shall, prior to June 30th of each year or as early as practicable thereafter, promulgate a list of grades of mixed fertilizer adequate to meet the agricultural needs of the State. After this list of grades has been established, no other grades of mixed fertilizers shall be eligible for registration: Provided, that the requirements of this section shall not apply to mixed fertilizers in packages of twenty-five (25) pounds and less. The Commissioner may revise this list of grades by conforming to the procedure prescribed in this section.

It is provided, however, that any distributor may be permitted to sell one but not exceeding one grade of specialty fertilizer not on the current approved list. The Commissioner may, in his discretion, require a sample label to be submitted before registering such fertilizer. (1947, c. 1086, s. 11; 1951, c. 1026, s. 8; 1959, c. 706, s. 8.)

Editor's Note. — Session Laws 1955, c. 276, s. 1, changed "agricultural experiment station," as used in § 106-15, to read "agricultural research station."

§ **106-50.12. False or misleading statements.** — It shall be unlawful to make any false or misleading statement or representation in regard to any commercial fertilizer offered for sale, sold, or distributed in this State, or to use any misleading or deceptive trademark or brand name in connection therewith. The Commissioner is hereby authorized to refuse the registration of any commercial fertilizer with respect to which this section is violated. (1947, c. 1086, s. 12.)

§ **106-50.13. Grade-tonnage reports.** — Each person registering commercial fertilizers under this article shall furnish the Commissioner with a confidential written statement of the tonnage of each grade of fertilizer sold by him in this State. Said statement shall include all sales for the periods of July first to and including December thirty-first and of January first to and including June thirtieth of each year. The Commissioner may, in his discretion, cancel the registration of any person failing to comply with this section if the above statement is not made within thirty days from date of the close of each period. The Commissioner, however, in his discretion, may grant a reasonable extension of time. No information furnished under this section shall be disclosed in such a way as to divulge the operations of any person. (1947, c. 1086, s. 13.)

§ **106-50.14. Publication of information concerning fertilizers.**—The Commissioner shall publish at least annually, in such forms as he may deem proper, complete information concerning the sales of commercial fertilizers, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses based on official samples of commercial fertilizers sold or offered for sale within the State as compared with the analyses guaranteed under §§ 106-50.4 and 106-50.5: Provided, however, that the information concerning production and use of commercial fertilizers shall be shown separately for periods July first to December thirty-first and January first to June thirtieth of each year, and that no disclosure shall be made of the operations of any person. (1947, c. 1086, s. 14; 1959, c. 706, s. 9.)

§ **106-50.15. Rules, regulations and standards.** — The Board of Agriculture is authorized, after public hearing, to prescribe such rules and regulations as may be found necessary for the enforcement of this article; and, upon recommendation of the director of the agricultural experiment station, to prescribe maximum chlorine for tobacco fertilizer. The Board of Agriculture is also authorized to regulate the weight of bags and/or packages in which fertilizer may be sold or offered for sale. (1947, c. 1086, s. 15; 1949, c. 637, s. 4.)

Editor's Note. — Session Laws 1955, c. 276, s. 1, changed "agricultural experiment station," as used in § 106-15, to read "agricultural research station."

§ **106-50.16. Short weight.**—If any commercial fertilizer in the possession of the consumer is found by the Commissioner to be short in weight, the registrant of said commercial fertilizer shall within thirty days after official notice from the Commissioner pay to the consumer a penalty equal to four times the value of the actual shortage. The Commissioner may in his discretion allow reasonable tolerance for short weight due to loss through handling and transporting. (1947, c. 1086, s. 16.)

§ **106-50.17. Cancellation of registration.** — The Commissioner, upon approval of the Board of Agriculture, is authorized and empowered to cancel the registration of any brand of commercial fertilizer or to refuse to register any brand of commercial fertilizer as herein provided, upon satisfactory proof that the registrant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this article or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant shall have been given a hearing by the Commissioner. (1947, c. 1086, s. 17.)

§ **106-50.18. "Stop-sale," etc., orders.**—It shall be the duty of the Commissioner to issue and enforce a written or printed "stop-sale, use, or removal" order to the owner or custodian of any lot of commercial fertilizer and to hold at a designated place when the Commissioner finds said commercial fertilizer is being offered or exposed for sale in violation of any of the provisions of this article until the law has been complied with and said commercial fertilizer is released in writing by the Commissioner or said violation has been otherwise legally disposed of by written authority. The Commissioner shall release the commercial fertilizer so withdrawn when the requirements of the provisions of this article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1947, c. 1086, s. 18; 1955, c. 354, s. 5.)

§ **106-50.19. Seizure, condemnation and sale.**—Any lot of commercial fertilizer not in compliance with the provisions of this article shall be subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the area in which said commercial fertilizer is located. In the event the court finds the said commercial fertilizer to be in violation of this article and orders the condemnation of said commercial fertilizer, it shall be disposed of in any manner consistent with the quality of the commercial fertilizer and the laws of the State: Provided, that in no instance shall the disposition of said commercial fertilizer be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of said commercial fertilizer or for permission to process or relabel said commercial fertilizer to bring it into compliance with this article. (1947, c. 1086, s. 19.)

§ **106-50.20. Punishment for violations.**—Each of the following offenses shall be a misdemeanor and any person upon conviction thereof shall be punished as provided by law for the punishment of misdemeanors:

(1) To manufacture, offer for sale, or sell in this State any mixed fertilizer or fertilizer materials containing any substance used as a filler that is injurious to crop growth or deleterious to the soil, or to use in such mixed fertilizer or fertilizer materials as a filler any substance that contains inert plant food material or any other substance for the purpose or with the effect of defrauding the purchaser.

(2) To offer for sale or to sell in this State for fertilizer purposes any raw or untreated leather, hair, wool waste, hoof, horn, rubber or similar nitrogenous materials, the plant food content of which is largely unavailable, either as such or mixed with other fertilizer materials.

(3) To make any false or misleading representation in regard to any mixed fertilizer or fertilizer material shipped, sold or offered for sale by him in this State, or to use any misleading or deceptive trademark or brand in connection therewith. The sale or offer for sale of any mixture

of nitrogenous fertilizer materials under a name or other designation descriptive of only one of the components of the mixture shall be considered deceptive and fraudulent.

The Commissioner is hereby authorized to refuse registration for any commercial fertilizer with respect to which this section is violated.

(4) The filing with the Commissioner of any false statement of fact in connection with the registration under § 106-50.4 of any commercial fertilizer.

(5) Forcibly obstructing the Commissioner or any official inspector authorized by the Commissioner in the lawful performance by him of his duties in the administration of this article.

(6) Knowingly taking a false sample of commercial fertilizer for use under provisions of this article; or knowingly submitting to the Commissioner for analysis a false sample thereof; or making to any person any false representation with regard to any commercial fertilizer sold or offered for sale in this State for the purpose of deceiving or defrauding such other person.

(7) The fraudulent tampering with any lot of commercial fertilizer so that as a result thereof any sample of such commercial fertilizer taken and submitted for analysis under this article may not correctly represent the lot; or tampering with any sample taken or submitted for analysis under this article, if done prior to such analysis and disposition of the sample under the direction of the Commissioner.

(8) The delivery to any person by the fertilizer chemist or his assistants or other employees of the Commissioner of a report that is willfully false and misleading on any analysis of commercial fertilizer made by the Department in connection with the administration of this article.

(9) Selling or offering for sale in this State commercial fertilizer without marking the same as required by § 106-50.5.

(10) Selling or offering for sale in this State commercial fertilizer containing less than the minimum content required by § 106-50.10.

(11) Failure of any manufacturer, importer, jobber, agent, or dealer to have applied for and to have been issued a permit as required by G.S. 106-50.6 before selling, offering or exposing for sale or distributing commercial fertilizers in this State.

(12) Failure of any manufacturer or contractor to procure a license under the provisions of G.S. 106-50.4 (d) before beginning operations within the State. (1947, c. 1086, s. 20; 1959, c. 706, ss. 10, 11.)

For sufficiency of indictment for violation of former statute, see State v. Southern Cotton Oil Co., 154 N.C. 635, 70 S.E. 741 (1911).

§ **106-50.21. Sales or exchanges between manufacturers.** — Nothing in this article shall be construed to restrict or avoid sales or exchanges of commercial fertilizers to each other by importers or manufacturers who mix fertilizer materials for sale or as preventing the free and unrestricted shipments of commercial fertilizers to manufacturers who have registered their brands as required by the provisions of this article. (1947, c. 1086, s. 21.)

§ **106-50.22. Appeals from assessments and orders of Commissioner.**—Nothing contained in this article shall prevent any person from appealing to a court of competent jurisdiction from any assessment or penalty or other final order or ruling of the Commissioner or Board of Agriculture. (1947, c. 1086, s. 22.)

ARTICLE 3.

Fertilizer Laboratories.

§ **106-51. Certification of fertilizer laboratories.** — The Commissioner of Agriculture, or his authorized agent, shall, upon the application of any commercial laboratory that analyzes fertilizer or fertilizer materials, make such examination as he shall consider fit of the work of said laboratory, and when, in his opinion, the examination shall show the work of the said laboratory to be accurate and reliable, he shall certify said laboratory to that effect.

To those manufacturers requesting names of certified laboratories, the Commissioner of Agriculture shall supply such information. (1933, c. 551.)

ARTICLE 4.

Insecticides and Fungicides.

§ **106-52. Rules and standards.** — The Department of Agriculture shall have power to make rules, regulations and adopt standards to carry out the designs and purposes of this article. (1927, c. 53, s. 1.)

Editor's Note.—For subsequent law affecting this article, see §§ 106-65.1 to 106-65.12.

§ **106-53. Registration.**—Before any manufacturer or dealer shall sell, offer or expose for sale in this State any Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide he shall register with the Department of Agriculture the name of each brand of said preparation, the name and address of the manufacturer or dealer, the minimum percent of each and every toxic chemical or compound present, and the specific name of each active ingredient used in its manufacture and the weight of the packages in which the material is packed. The words "Paris green, calcium arsenate, lead arsenate and all other insecticides and fungicides" mentioned and used in this article, shall apply only to insecticides and fungicides used on cotton, tobacco, all field crops, gardens, orchards, fruits, etc., for the control or destruction of insect life and fungus diseases. (1927, c. 53, s. 2.)

§ **106-54. Labels to be affixed.** — Every lot, package or parcel of Paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, offered or exposed for sale within this State, shall have affixed thereto a tag or label, in a conspicuous place on the outside thereof containing a legible and plainly printed statement in the English language clearly and truly certifying:

(1) The net weight of the lot, package or parcel;
(2) The name, brand or trademark;
(3) The name, and address of the manufacturer, importer, jobber, firm, association, corporation, dealer or person, etc., responsible for placing the commodity on the market;
(4) The minimum percent of each and every toxic chemical or compound present;
(5) The specific name of each active ingredient used in its manufacture. (1927, c. 53, s. 3.)

§ **106-55. Refusal and cancellation of registration.** — The Commissioner shall have the power to refuse to register any Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide under a name, brand or trademark, which would be misleading or deceptive. Should any Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide be registered in the State and it is afterward discovered that such registration is in violation of any of the provisions of this article, the Commissioner shall cancel such registration. (1927, c. 53, s. 4.)

§ 106-56. Registration fee; expiration of registration certificate; renewal.—All manufacturers or distributors, for the purpose of defraying the expenses connected with the enforcement of this article, before selling, offering or exposing for sale in this State any Paris green, calcium arsenate, lead arsenate or any other insecticides and fungicides, shall pay annually to the Department of Agriculture a registration fee of ten dollars ($10.00) for each and every brand of the aforementioned insecticides and fungicides registered as required under § 106-53. All certificates of registration shall expire on the thirty-first day of December next following the date of issuance and shall be subject to renewal upon receipt of annual registration fees. (1927, c. 53, s. 5; 1939, c. 284, s. 1.)

§ 106-57. Certificates entitling manufacturers or distributors to sell; unlawful sale, etc.—To manufacturers or distributors who have duly registered their brands and have paid registration fees on Paris green, calcium arsenate, lead arsenate or other insecticides and fungicides in compliance with the requirements of this article, there shall be issued by the Department of Agriculture certificates which shall entitle said manufacturers or distributors to sell all duly registered brands until the expiration of such certificates as provided under § 106-56. When any manufacturer or distributor shall have duly complied with the provisions of this article, no other agency representing such manufacturer or distributor shall be required to register or pay registration fees on such brands as have been duly registered. It shall be unlawful for any manufacturer or distributor, or their agents to sell, offer or expose for sale in this State any of the aforementioned insecticides or fungicides which have not been duly registered and for which annual registration fees have not been paid. (1927, c. 53, s. 6; 1939, c. 284, s. 1.)

§ 106-58. Requirement of identifying color or medium.—For the purpose of safeguarding the legitimate uses of Paris green, calcium arsenate, lead arsenate and all other insecticides and fungicides and to prevent the poisoning of man or animal by confusion with or mixing with foods and feeds, either by accident or intent, it shall be required as a qualification for registration that all such aforesaid insecticides and fungicides which are likely to be confused with or which are not readily apparent when mixed with such foods or feeds, shall bear or contain some identifying added color or medium to differentiate them from, or to show their presence when contained in such foods or feeds; provided that no commodity intended for insecticidal, fungicidal or similar purposes which is already developed, or new products for these purposes which may appear from time to time shall be excluded from registration where there is not available or has not been developed a suitable identifying color or medium; and, provided that in the absence of a suitable identifying color or medium, the Commissioner shall have authority himself or through representatives designated by him to cooperate with manufacturers and distributors in the development of suitable safeguards; final decision, with due right of appeal, resting in the discretion of the Board of Agriculture. (1927, c. 53, s. 7; 1929, c. 196, s. 1; 1939, c. 284, s. 1.)

§ 106-59. Statement mailed; what shown.—Every manufacturer and dealer who has registered Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide for sale within the State of North Carolina shall mail the Commissioner on forms provided by the Commissioner, within forty-eight hours of each sale, shipment or delivery into or within North Carolina, a statement showing the official name of the insecticide or fungicide, the guaranteed analysis, the quantity and the name and address of the purchaser to whom sold, and the initials and numbers of the car, if sold in car lots. (1927, c. 53, s. 8; 1933, c. 233; 1939, c. 284, s. 4.)

§ 106-60. Entrance for inspection or sampling; analysis.—The Commissioner in person, or by deputy, shall have the power to enter into any car, warehouse, store, building, boat, vessel or place supposed to contain insecticides or fungicides, for the purpose of inspection or sampling, and shall have the power to take samples for analysis from any lot, package or parcel of insecticides or fungicides. It shall be unlawful for any person to oppose entrance of said Commissioner or deputy, or in any way interfere with the discharge of his duty. All analyses shall be made by the official methods of the Association of Official Agricultural Chemists of the United States, and shall be made by chemists of the Department of Agriculture. Where a method of analysis is required before the Association of Official Agricultural Chemists has adopted an official or tentative one, and pending appearance of an official method by the Association of Official Agricultural Chemists, such methods as may be available or may be developed, subject to approval by the Board of Agriculture, may be used; provided that such method upon being used shall be immediately available for use and checking to all persons, firms or corporations concerned, and results from such methods shall be subject to a reasonable period of consideration and hearings before any proceedings based upon them are instituted. (1927, c. 53, s. 9; 1939, c. 284, s. 2.)

§ **106-61. Adulterated and misbranded articles; injunction.**—It shall be unlawful for any manufacturer or distributor to sell, offer or expose for sale in this State any Paris green, calcium arsenate, lead arsenate or any other insecticides or fungicides which are adulterated or misbranded within the meaning of this article. Any Paris green, calcium arsenate, lead arsenate and any other insecticide or fungicide shall be deemed to be adulterated if its strength or purity fall below the professed standard or quality under which it is sold; or if any substance has been substituted wholly or in part for the article; or if any valuable constituent of the article has been wholly or in part abstracted; or if it be in any way depreciated or be in departure from the true and honest value represented. Paris green, calcium arsenate, lead arsenate and all other insecticides and fungicides shall be deemed to be misbranded if it carries any false or misleading statement upon or attached to the lot, package or parcel, or, if any false or misleading statements concerning its value are made on the lot, package or parcel or in any printed advertising matter issued by the manufacturer or dealer that registered Paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, or if the number of net pounds set forth upon the package, lot, or parcel is not correct. It shall be the duty of the Attorney General when requested by the Commissioner, to institute suit to enjoin any manufacturer, or dealer, resident or nonresident, from manufacturing or selling or soliciting orders for the sale of Paris green, calcium arsenate, lead arsenate, or any other insecticide or fungicide, for use in this State without complying with all the provisions in this article, which injunction may be issued without bond or advance cost. (1927, c. 53, s. 10; 1939, c. 284, s. 3.)

§ **106-62. Seizure of articles.**—(a) When any Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide is found to be sold, offered or exposed for sale in this State in violation of any provisions of this article, or whenever a duly authorized agent of the Department of Agriculture finds he has probable cause to believe that any insecticide or fungicide is being sold, offered or exposed for sale in this State in violation of any provisions of this article, he shall affix to such insecticide or fungicide a tag, appropriate marking, or shall post a notice on the premises in which said insecticide or fungicide is located, giving notice that such insecticide or fungicide is suspected of being sold, offered or exposed for sale in violation of the provisions of this article or that the same is being sold, offered or exposed for sale in violation of the provisions of this article, and the same has been detained or embargoed, and warning all persons not to remove or dispose of such Paris green, calcium arsenate, lead arsenate or other insecticide or fungicide by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed insecticide or fungicide by sale or to offer to expose same for sale without such permission.

(b) When an insecticide or fungicide detained or embargoed under subsection (a) has been found by such agent to be sold, offered or exposed for sale in violation of any provisions of this article he shall petition the judge of any recorder's, county or superior court in whose jurisdiction the insecticide or fungicide is detained or embargoed for an order of condemnation of such insecticide or fungicide. When such agent has found that such insecticide or fungicide so detained or embargoed is not being sold, offered or exposed for sale in violation of any of the provisions of this article he shall remove the tag, marking or notice.

(c) If the court finds that the detained or embargoed insecticide or fungicide is being sold, offered or exposed for sale in violation of any of the provisions of this article such insecticide and fungicide shall, after entry of the decree of the court, be destroyed at the expense of the claimant thereof, under the supervision of such agent and all court costs and fees and storage and other proper expenses, shall be taxed against the claimant of such article or his agent: Provided, that if any insecticide or fungicide can be corrected by proper labeling or processing or by any other correction so that the same will comply with the provisions of this article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such insecticide or fungicide shall be so labeled, processed or corrected, has been executed, may by order direct that such insecticide or fungicide be delivered to the claimant thereof for such labeling, processing or correction under the supervision of an agent of the Department of Agriculture. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant on representation to the court by the Department of Agriculture that the insecticide or fungicide is no longer in violation of this article, and that the expenses of such supervision have been paid. (1927, c. 53, s. 11; 1945, c. 668.)

§ **106-63. Copy of analysis in evidence.** — A copy of the analysis made by any chemist of the Department of Agriculture of any Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide certified to by him shall be admissible as evidence in any court of the State on trial of any issue involving the merits of the insecticides and fungicides covered by this article. (1927, c. 53, s. 12.)

§ **106-64. Articles in transit.**—Nothing contained in this article shall interfere with Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide passing through the State in transit, nor shall it apply to the delivery of materials to manufacture Paris green, calcium arsenate, lead arsenate or any other insecticide or fungicide for manufacturing purposes. (1927, c. 53, s. 13.)

§ **106-65. Violation of article.**—Any manufacturer or dealer violating any provision or section in this article, or any rule, regulation or standard of the Department of Agriculture promulgated under this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars nor more than two hundred and fifty dollars for each offense. (1927, c. 53, s. 14.)

Article 4A.

Insecticide, Fungicide and Rodenticide Act of 1947.

§ **106-65.1. Title.**—This article may be cited as the "Insecticide, Fungicide and Rodenticide Act of 1947." (1947, c. 1087, s. 1.)

Cross Reference.—For other provisions relating to insecticides and fungicides, see §§ 106-52 through 106-65.

§ **106-65.2. Definitions.**—For the purpose of this article:

(1) The term "active ingredient" means an ingredient which will prevent, destroy, repel, or mitigate insects, fungi, rodents, weeds, or other pests.

(2) The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the articles has been wholly or in part abstracted.

(3) The term "antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(4) The term "Board of Agriculture" or "Board" means the North Carolina Board of Agriculture.

(5) The term "Commissioner" means the Commissioner of Agriculture.

(6) The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, bacteria, or weeds, or such other pests as may be designated by the Commissioner, but not including simple, mechanical devices such as rat traps, or equipment used for the application of economic poisons when sold separately therefrom.

(7) The term "economic poison" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Commissioner shall declare to be a pest.

(8) The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, bacteria, and viruses, except those on or in living man or other animals.

(9) The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi, or plant disease.

(10) The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

(11) The term "inert ingredient" means an ingredient which is not an active ingredient.

(12) The term "ingredient statement" or "guaranteed analysis statement" means a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; and, in addition, in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each stated as elemental (metallic) arsenic.

(13) The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice, also nematodes and other worms, or any other invertebrates which are destructive, constitute a liability and may be classed as pests.

(14) The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

(15) The term "label" means the written, printed, or graphic matter on, attached to, the economic poison or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, or relating to the economic poison or device when employed for commercial purposes.

(16) The term "labeling" means all labels and other written, printed, or graphic matter:
  a. Upon the economic poison or device or any of its containers or wrappers;
  b. Accompanying the economic poison or device at any time;
  c. To which reference is made on the label or in literature accompanying or relating commercially to the economic poison or device, except when accurate, nonmisleading reference is to current official publications of the State experiment station, the State College of Agriculture, the North Carolina Department of Agriculture, the North Carolina State Board of Health, or similar federal institutions or other official agencies of this State or other states when such agencies are authorized by law to conduct research in the field of economic poisons.

(17) The term "misbranded" shall apply:
  a. To any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
  b. To any economic poison:
    1. If it is in imitation of or is offered for sale under the name of another economic poison;
    2. If its labeling bears any reference to registration under this article;
    3. If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;
    4. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals;
    5. If the label does not bear an ingredient or guaranteed analysis statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient or guaranteed analysis statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase;
    6. If any word, statement, or other information required by or under the authority of this article to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or
    7. If in the case of an insecticide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized safe practice, it shall be injurious to living man or other vertebrate animals or vegetation, to which it is applied, or to the person applying such economic poison, excepting pests and weeds.

(18) The term "person" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

(19) The term "registrant" means the person registering any economic poison pursuant to the provisions of this article.

(20) The term "rodenticide" means any substance or mixture of substances

intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the Commissioner shall declare to be a pest.

(21) The term "weed" means any plant which grows where not wanted. (1947, c. 1087, s. 2.)

Editor's Note. — Session Laws 1955, c. 276, s. 1, changed "agricultural experiment station," as used in § 106-15, to read "agricultural research station."

For designation of North Carolina State College of Agriculture and Engineering as North Carolina State University at Raleigh, see §§ 116-2, 116-27.

§ **106-65.3. Prohibited acts.**—(a) It shall be unlawful for any person to distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State any of the following:

(1) Any economic poison which is not registered pursuant to the provisions of § 106-65.5, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration: Provided, that, in the discretion of the Commissioner, a change in the labeling or formula of an economic poison may be made within a registration period without requiring reregistration of the product: Provided further, that changes at no time are permissible if they lower the efficacy of the product.

(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing:

a. The name and address of the manufacturer, registrant, or person for whom manufactured;

b. The name, brand, or trademark under which said article is sold; and

c. The net weight or measure of the content subject, however, to such reasonable variations as the Board of Agriculture may permit.

(3) Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in § 106-65.6, unless the label shall bear, in addition to any other matter required by this article:

a. The skull and crossbones;

b. The word "poison" prominently, in red, on a background of distinctly contrasting color; and

c. A statement of an antidote for the economic poison.

(4) The economic poisons commonly known as lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium floride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this article, or any other white or lightly colored powder economic poison which the Board of Agriculture, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored; provided, that the Board may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this sub-

division if it determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any economic poison which is adulterated or misbranded, or any device which is misbranded.

(b) It shall be unlawful:

(1) For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this article or the rules and regulations promulgated hereunder, or to add any substance to, or take any substance from an economic poison in a manner that may defeat the purpose of this article;

(2) For any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of economic poison or device to which such request relates, to furnish to or permit any person designated by the Commissioner to have access to and to copy such records of business transactions as may be essential in carrying out the purposes of this article;

(3) For any person to give a guaranty or undertaking provided for in § 106-65.8 which is false in any particular, except that a person who receives and relies upon a guaranty authorized under § 106-65.8 may give a guaranty to the same effect, which guaranty shall contain in addition to his own name and address the name and address of the person residing in the United States from whom he received the guaranty or undertaking;

(4) For any person to use for his own advantage or to reveal, other than to the Commissioner, or officials or employees of the United States Department of Agriculture, or other federal agencies, or to the courts in response to a subpoena, or to physicians, and in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, in accordance with such directions as the Commissioner may prescribe, any information relative to formulas of products acquired by authority of § 106-65.5; and

(5) For any person to oppose or interfere in any way with the Commissioner or by his duly authorized agents in carrying out the duties imposed by this article. (1947, c. 1087, s. 3; 1953, c. 675, s. 11.)

§ **106-65.4. Injunctions.**—In addition to the remedies herein provided the Commissioner of Agriculture is hereby authorized to apply to the superior court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of § 106-65.3, irrespective of whether or not there exists an adequate remedy at law. (1947, c. 1087, s. 4.)

§ **106-65.5. Registration.** — (a) Every economic poison which is distributed, sold, or offered for sale within this State or delivered for transportation or transported in interstate commerce or between points within this State shall be registered in the office of the Commissioner, and such registrations shall be renewed annually; provided, that products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels may, in the discretion of the Commissioner, be added by supplement statements during the current period of registration. The registrant shall file with the Commissioner a statement including:

(1) The name and address of the registrant and the name and address of the person whose name will appear on the label, if other than the registrant;

(2) The name of the economic poison;

(3) A complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it including directions for use; and

(4) If requested by the Commissioner a full description of the tests made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the economic poison was registered or last reregistered.

(b) The registrant, before selling or offering for sale any economic poison in this State, shall register each brand or grade of such economic poison with the Department of Agriculture upon forms furnished by the Department, and, for purposes of defraying expenses connected for the enforcement of this article, shall pay to the Department an annual inspection fee of ten ($10.00) dollars for each and every brand or grade to be offered for sale in this State, whereupon there shall be issued to the registrant by the Department of Agriculture, a certificate entitling the registrant to sell all duly registered brands in this State until the expiration of the certificate. All certificates shall expire on December 31st of each year and are subject to renewal upon receipt of annual inspection fees.

(c) The Commissioner, whenever he deems it necessary in the administration of this article, may require the submission of the complete formula of any economic poison. If it appears to the Commissioner that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of this article, he shall register the article.

(d) If it does not appear to the Commissioner that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this article, he shall notify the registrant of the manner in which the article, labeling, or other material required to be submitted fail to comply with the article so as to afford the registrant an opportunity to make the necessary corrections.

(e) The Commissioner is authorized and empowered to refuse to register, or to cancel the registration of, any brand of economic poison as herein provided, upon satisfactory proof that the registrant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this article or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant shall have been given a hearing by the Board of Agriculture.

(f) Notwithstanding any other provision of this article, registration is not required in the case of an economic poison shipped from one plant within this State to another plant within this State operated by the same person. (1947, c. 1087, s. 5.)

§ **106-65.6. Determination; rules and regulations; uniformity.**—(a) The Commissioner is authorized, after opportunity for a hearing:

(1) To declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substance;

(2) To determine whether economic poisons are highly toxic to man; and

(3) To determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of subdivision (4), subsection (a) of § 106-65.3.

(b) The Commissioner is further authorized:

(1) To effect the collection and examination of samples of economic poisons and devices to determine compliance with the requirements of this article; and he shall have the authority at all reasonable hours to enter into any car, warehouse, store, building, boat, vessel or place supposed to contain economic poison, or devices, for the purpose of

inspection or sampling, and to procure samples for analysis or examination from any lot, package or parcel of economic poison, or any device;

(2) To publish from time to time, in such forms as he may deem proper, complete information concerning the sale of economic poisons, together with such data on their production and use as he may consider advisable, and reports of the results of the analyses based on official samples of economic poisons sold within the State.

(c) The Board of Agriculture is authorized to prescribe, after public hearing following due public notice, such rules, regulations, and standards relating to the sale and distribution of economic poisons as they may find necessary to carry into effect the full intent and meaning of this article.

(d) In order to avoid confusion endangering the public health, resulting from diverse requirements, particularly as to the labeling and coloring of economic poisons, and to avoid increased costs to the people of this State due to the necessity of complying with such diverse requirements in the manufacture and sale of such poisons, the Board of Agriculture and the Commissioner are authorized and empowered to cooperate with, and enter into agreements with, any other agency of this State, the United States Department of Agriculture, and any other state or agency thereof for the purpose of carrying out the provisions of this article and securing uniformity of regulations. (1947, c. 1087, s. 6.)

§ **106-65.7. Violations.**—(a) If it shall appear from the examination or evidence that any of the provisions of this article or the rules and regulations issued thereunder have been violated, the Commissioner may cause notice of such violation to be given to the registrant, distributor, and possessor from whom said sample or evidence was taken. Any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the Board of Agriculture. If it appears after such hearing that there has been a sufficient number of violations of this article or the rules and regulations issued thereunder, the Commissioner may certify the facts to the proper prosecuting attorney and furnish that officer with a copy of the results of the examination of such sample duly authenticated by the analyst or other officer making the examination under the oath of such officer. It shall be the duty of every solicitor to whom the Commissioner shall report any violation of this article to cause proceedings to be prosecuted without delay for the fines and penalties in such cases. Any person convicted of violating any provisions of this article or the rules and regulations issued thereunder shall be adjudged guilty of a misdemeanor and shall be punished in the discretion of the court.

(b) Nothing in this article shall be construed as requiring the Commissioner to report for the institution of proceedings under this article, minor violations of this article, whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (1947, c. 1087, s. 7.)

§ **106-65.8. Exemptions.** — The penalties provided for violations of subsection (a) of § 106-65.3 shall not apply to:

(1) Any carrier while lawfully engaged in transporting an economic poison within this State, if such carrier shall, upon request, permit the Commissioner or his designated agent to copy all records showing the transactions in and movement of the articles;

(2) Public officials of this State and the federal government engaged in the performance of their official duties;

(3) The manufacturer or shipper of an economic poison for experimental use only:

a. By or under the supervision of an agency of this State or of the federal government authorized by law to conduct research in the field of economic poisons; or

b. By others if the economic poison is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only—Not to be sold," together with the manufacturer's name and address: Provided, however, that if a written permit has been obtained from the Commissioner, economic poisons may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit;

(4) Any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the article in the same unbroken package, to the effect that the article was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this article, designating this article. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this article. (1947, c. 1087, s. 8.)

§ **106-65.9. Short weight.** — If any economic poison in the possession of consumers is found by the Commissioner to be short in weight, the registrant of said economic poison shall within thirty days after official notice from the Commissioner pay to the consumer a penalty equal to four times the value of the actual shortage. (1947, c. 1087, s. 9.)

§ **106-65.10. "Stop-sale" orders.**—It shall be the duty of the Commissioner to issue and enforce a written or printed "stop-sale, use, or removal" order to the owner or custodian of any lot of economic poison and to hold at a designated place when the Commissioner finds said economic poison is being offered or exposed for sale in violation of any of the provisions of this article until the law has been complied with and said economic poison is released in writing by the Commissioner or said violation has been otherwise legally disposed of by written authority. The Commissioner shall release the economic poison so withdrawn when the requirements of the provisions of this article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1947, c. 1087, s. 10.)

§ **106-65.11. Seizures, condemnation and sale.**—Any lot of economic poison not in compliance with the provisions of this article shall be subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the area in which said economic poison is located. In the event the court finds the said economic poison to be in violation of this article and orders the condemnation of said economic poison, it shall be disposed of in any manner consistent with the quality of the economic poison and the laws of the State: Provided, that in no instance shall the disposition of said economic poison be ordered by the court without first giving the claimant an opportunity to apply to the court for the release of said economic poison or for permission to process or relabel said product to bring it into compliance with this article. (1947, c. 1087, s. 11.)

§ **106-65.12. Delegation of duties.**—All authority vested in the Commissioner by virtue of the provisions of this article may with like force and effect be executed by such employees of the Department of Agriculture as the Commissioner may from time to time designate for said purpose. (1947, c. 1087, s. 12.)

ARTICLE 4B.

Aircraft Application of Pesticides.

§ **106-65.13. Definitions.**—For the purposes of this article:

(1) The term "aircraft" means any contrivance now known or hereafter invented, used or designed for navigation of, or flight in, the air.

(2) The term "Board of Agriculture" means the North Carolina Board of Agriculture.

(3) The term "Commissioner" means the Commissioner of Agriculture.

(4) The term "custom application of pesticides" means any application of pesticides by aircraft.

(5) The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, but not limited to, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

(6) The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating fungi or plant disease.

(7) The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

(8) The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example but not limited to, beetles, bugs, bees, and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, but not limited to, spiders, mites, ticks, centipedes, and wood lice.

(9) The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

(10) The term "person" means any individual, firm, partnership, association, corporation, company, joint stock association, or body politic, or any organized group of persons whether incorporated or not; and includes any trustee, receiver, assignee, or other similar representative thereof.

(11) The term "pesticide" or "economic poison" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Commissioner shall declare to be a pest.

(12) The term "weed" means any plant or plant part which grows where not wanted. (1953, c. 1333.)

§ 106-65.14. Licenses.—(a) It shall be unlawful for any person to engage in custom application of pesticides within this State at any time without a license issued by the Commissioner. Application for a license shall be made to the Commissioner and each application shall contain information regarding the applicant's qualifications and proposed operations and such other relevant matters as may be required pursuant to regulations promulgated by the Board of Agriculture.

(b) The Commissioner may require the applicant to show, upon examination, that he possesses adequate knowledge concerning the proper use and application of pesticides, and the dangers involved and precautions to be taken in connection with their application. If the applicant is other than an individual, the applicant shall designate an officer, member, or technician of the organization to take the examination, such designee to be subject to the approval of the Commissioner. If the extent of the applicant's operations warrant it, the Commissioner may require more than one officer, member, or technician to take the examination.

(c) If the Commissioner finds the applicant qualified, the Commissioner shall issue a license, which shall authorize the licensee to perform custom application of pesticides within this State. The license may restrict the applicant to the use of a certain type or types of materials if the Commissioner finds that the applicant is qualified to use only such type or types. If a license is not issued as applied for, the Commissioner shall inform the applicant in writing of the reasons therefor. All licenses issued under this article shall expire on December 31 of each year and may be renewed upon the filing of a new application therefor.

(d) The Commissioner may suspend, pending inquiry for not longer than ten days, and, after opportunity for a hearing, may revoke or modify the provisions of any license issued under this section, if he finds as a fact that the licensee is no longer qualified or has engaged in fraudulent business practices in the custom application of pesticides, or has made any custom application in a faulty, careless, or negligent manner, or has violated any of the provisions of this article or regulations made thereunder.

(e) The Commissioner may require, under such rules and regulations as may be promulgated under this article, from each applicant a liability bond against damage to person or property by aircraft and a reasonable performance bond with sufficient surety satisfactory to the Commissioner, which performance bond is to secure the performance of contractual obligations of the licensee with respect to custom application of pesticides. Any person injured by the breach of any such obligation or any person damaged by such aircraft shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained.

(f) Any person aggrieved by any action of the Commissioner may within ten days after notice thereof request a review of said action by the Board of Agriculture. If no request for review is so made, the decision of the Commissioner shall be final. If a review is so requested, the Board of Agriculture shall promptly review the action of the Commissioner and either affirm or overrule his action. If the Board of Agriculture affirms the Commissioner, it shall find the facts of the case and the aggrieved person may within thirty days after notice thereof appeal to the superior court of the county in which such person resides or to the Superior Court of Wake County and the matter may be heard in or out of chambers. Notice of the appeal shall be served on the Commissioner and within ten days thereafter the Commissioner shall certify and file in the court to which the appeal is taken a transcript of any record pertaining thereto, including a transcript of evidence received. The court shall have jurisdiction to affirm, set aside or modify the action of the Board of Agriculture, provided, that the findings of fact as made by said Board, if supported by evidence, shall be conclusive.

Any license which has been suspended or revoked by the Commissioner or Board of Agriculture shall remain suspended or revoked until the laws, and regulations of the Board of Agriculture, have been complied with or until the decision or action of said Commissioner or Board has been set aside by court action. (1953, c. 1333.)

§ **106-65.15. Regulations, materials and methods of application.**—The Board of Agriculture, after public hearing, may adopt regulations prohibiting the use of materials or methods in custom application of pesticides to the extent necessary to protect health or property and may make such other regulations as it may deem necessary to carry out the provisions of this article. Provided, however, such regulations shall not be inconsistent with regulations issued by this State or by the federal government respecting safety in air navigation or operation of aircraft and before issuing any regulations directly related to any matter within the jurisdiction of any other official of this State, the Commissioner shall consult with that official with reference thereto. (1953, c. 1333.)

§ **106-65.16. Reports.**—The Board of Agriculture may by regulation require any licensee to maintain records and furnish reports giving information with respect to particular applications of pesticides and such other relevant information as the Board of Agriculture may deem necessary. (1953, c. 1333.)

§ **106-65.17. Information.**—The Commissioner may, in cooperation with the North Carolina agricultural experiment station, publish information regarding injury which may result from improper application or handling of pesticides and the methods and precautions designed to prevent such injury. (1953, c. 1333.)

Editor's Note. — Session Laws 1955, c. 276, s. 1, changed "agricultural experiment station," as used in § 106-15, to read "agricultural research station."

§ **106-65.18. Penalties.**—Any person violating the provisions of this article or the regulations issued hereunder shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned or both in the discretion of the court. (1953, c. 1333.)

§ **106-65.19. Enforcement.**—For the purpose of carrying out the provisions of this article the Commissioner may enter upon any public or private premises at reasonable times in order to have access for the purpose of inspecting any aircraft or materials subject to this article. (1953, c. 1333.)

§ **106-65.20. Delegation of duties.**—The functions vested in the Commissioner by this article may be delegated by him to such employees of the Department of Agriculture or other qualified persons as the Commissioner may from time to time designate for such purposes. (1953, c. 1333.)

§ **106-65.21. Cooperation.**—The Commissioner may cooperate with any other agency of this State or its subdivisions or with any agency of any other state or of the federal government for the purpose of carrying out the provisions of this article and of securing uniformity of regulations. (1953, c. 1333.)

Article 4C.

Structural Pest Control Act.

§ **106-65.22. Title.**—This article shall be known by the title of "Structural Pest Control Act of North Carolina of 1955." (1955, c. 1017.)

§ **106-65.23. Structural Pest Control Commission created; membership, terms and vacancies; organization and quorum; compensation and expenses.**—There is hereby created a Structural Pest Control Commission. The members of the Commission created by this article shall be selected and appointed by the Governor. It shall consist of five members who shall be composed of a representative of the Division of Entomology of the State Department of Agriculture, a representative from the Entomology Faculty of North Carolina State College, a representative of the State Department of Agriculture, and two members of the pest control industry at large who are residents of the State of North Carolina, but not affiliates of the same company. The terms of all members of such board shall be three years, unless sooner terminated by the appointing authority, except that the initial board members shall be appointed, one for a term expiring July 1, 1956, two for a term expiring July 1, 1957, and two for a term expiring July 1, 1958. No member of the board who is a member of the pest control industry at large and who was appointed for a full three-year term shall succeed himself, nor shall both board members from the pest control industry be replaced the same year. This prohibition against succession does not apply to the representatives of the State Department of Agriculture nor the representative of the Entomology Faculty of North Carolina State College. If a vacancy occurs in said Commission, another commissioner shall be appointed by the Governor to fill the unexpired term. The Commission shall elect from its membership a chairman who shall be elected annually by members of the Commission by a majority vote. Each member shall receive ten dollars ($10.00) per diem while actually attending to work of the Commission and shall be reimbursed for his necessary traveling and other expenses incurred in the performance of his duties. Three members of said Commission shall constitute a quorum but no action at any meeting shall be taken without three votes in accord. The Commission is authorized, in its discretion, to employ a secretary to perform clerical duties in the implementation of this article, said secretary to be paid out of funds collected by the Commission pursuant to the provisions of this article. (1955, c. 1017; 1957, c. 1243, s. 1.)

Cross Reference. — For designation of North Carolina State College of Agriculture and Engineering as North Carolina State University at Raleigh, see §§ 116-2, 116-27.

§ **106-65.24. Definitions.**—For the purposes of this article, the following terms, when used in the article or the rules and regulations, or orders made pursuant thereto shall be construed respectively to mean:

(1) "Applicant" means any person in charge of any individual, firm, partnership, corporation, association, or any other organization or any combination thereof, making application for a license to engage in structural pest control, control of structural pests or household pests, or fumigation operations, or any person qualified under the terms of this article.

(2) The term "branch office," as used in this article, shall mean and include any place of doing business which has two or more employees engaged full time in the control of insect bests, rodents, or wood-destroying organisms.

(3) "Commission" refers to the Structural Pest Control Commission created by this article.

(4) The term "employee" as used in this article, shall mean any person employed by a licensee with the exceptions of clerical, janitorial, or office maintenance employees, or those employees performing work completely disassociated with the control of insect pests, rodents or the control of wood-destroying organisms.

(5) "Fumigants" mean any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes or vapors, and which gas or gases, fumes or vapors when liberated and when used will destroy vermin, rodents, insects, and other pests; but may be lethal, poisonous, noxious, or dangerous to human life.

(6) "Insecticides" are substances, not fumigants, under whatever name known, used for the destruction or control of insects and similar pests.

(7) "Licensee," as used in this article, shall mean the designated person in charge of the business establishment or business entity, whether it be individual, firm, partnership, corporation, association or any organization, or any combination thereof, engaged in pest control work covered under the provisions of this article. Each branch office of a business establishment is to be in charge of a person who has a license herein provided for.

(8) "Repellents" are substances, not fumigants, under whatever name known, which may be toxic to insects and related pests, but are generally employed because of capacity for preventing the entrance or attack of pests.

(9) "Rodenticides" are substances, not fumigants, under whatever name known, whether poisonous or otherwise, used for the destruction or control of rodents.

(10) "Structural pest control" means the control of wood-destroying organisms or household pests (such as moths, roaches, and bedbugs), including the identification of infestations or infections, the making of inspections, the use of pesticides, including insecticides, repellents, rodenticides and fumigants, as well as all other substances, mechanical devices or structural modifications under whatever name known, for

the purpose of preventing, controlling and eradicating insects, vermin, rodents and other pests in household structures, commercial buildings and other structures, (including household structures, commercial buildings and other structures in all stages of construction) and outside areas, as well as all phases of fumigation, including treatment of products by vacuum fumigation, and the fumigation of railroad cars, trucks, ships, and airplanes, or any one or any combination thereof. (1955, c. 1017; 1957, c. 1243, s. 2.)

§ **106-65.25. Phases of structural pest control; license required; exceptions.**—(a) Structural pest control is divided into the following phases:

(1) Control of wood-destroying organisms by any method other than fumigation,
(2) Control of household pests by any method other than fumigation,
(3) Fumigation,

and a license is required for each such phase, and it shall be unlawful for any person, firm, corporation, association or any organization or combination thereof to engage in or supervise work as a manager, owner, or owner-operator in any phase of structural pest control unless there shall first be secured a valid license therefor, issued by the Structural Pest Control Commission.

(b) This article shall not apply to any person doing work on his own property or to any regular employee of any person, firm or corporation doing work on the property of such person, firm or corporation, under the direct supervision of the person who owns or is in charge of the property on which work is being done. This article shall not apply to agents or agencies of the federal, State or local governments. (1955, c. 1017; 1957, c. 1243, s. 3.)

§ **106-65.26. Qualifications of applicants for license.**—Any applicant for a license must present satisfactory evidence to the Commission concerning his qualifications for such license. The basic qualifications shall be:

(1) Two years as an employee or owner-operator in the field of structural pest control, control of wood-destroying organisms or fumigation, for which license is applied, or
(2) One or more years training in specialized pest control, control of wood-destroying organisms or fumigation under university or college supervision may be substituted for practical experience (each year of such training may be substituted for one-half year of practical experience), or
(3) A degree from a recognized college or university with training in entomology, sanitary or public health engineering, or related subjects, including sufficient practical experience of structural pest control work under proper supervision,
(4) All applicants must have practical experience and knowledge of practical and scientific facts underlying the practice of structural pest control, control of wood-destroying organisms or fumigation. (1955, c. 1017.)

§ **106-65.27. Examination of applicants; fee; license not transferable.**—(a) All applicants must pass a satisfactory oral or written examination. Frequency of such examinations shall be at the discretion of the Commission, based upon the number of applications received, provided that a minimum of two examinations shall be held annually. The examinations will cover phases of structural pest control (control of wood-destroying organisms, household pests and fumigation). The Commission shall give one examination for one fee covering structural pest control, or any one of the following phases: Control of household pests, or control of wood-destroying organisms, or fumigation.

The Commission shall be entitled to collect from each qualified person who makes application to take the examination to become a registered structural pest control operator, wood-destroying organism control operator, or fumigator, the sum of twenty-five dollars ($25.00), which shall be in full for the examination. Any or all examinations may be taken at the same time for the payment of one fee and in case the applicant shall not be licensed, he or she shall have the right to take one additional examination at a regularly scheduled examination, without the payment of an additional fee.

(b) A business license shall not be transferable. When there is a change in the status of the qualified person operating under a business license, the business establishment or business entity, or branch office, whether to be an individual, firm, partnership, corporation, association, or any organization or any combination thereof, shall have 90 days or until the next meeting of the Commission following the expiration of said 90-day period to designate a person to qualify under the provisions of this article. (1955, c. 1017.)

§ 106-65.28. Revocation of license.—Any license may be revoked by a majority vote of the Commission, after notice and hearings as specified in § 106-65.32, and for the following causes:

(1) Misrepresentation for the purpose of defrauding; deceit or fraud; the making of a false statement with knowledge of its falsity for the purpose of inducing others to act thereon to their damage; or the use of methods or materials which are not reasonably suitable for the purpose contracted.

(2) Failure of the license holder to give the Commission, or its authorized representatives, upon request, true information regarding methods and materials used, work performed, where such information is essential to the administration of this article.

(3) Failure of the license holder to make registrations herein required or failure to pay the registration fees.

(4) Any misrepresentation in the application for a license. (1955, c. 1017.)

§ 106-65.29. Rules and regulations. — The Commission is hereby authorized and empowered to make such reasonable rules and regulations with regard to structural pest control as may be necessary to protect the interests, health and safety of the public. Such rules and regulations shall not become effective until a public hearing shall have been held and notification of such hearing shall have been given to all licensees. (1955, c. 1017.)

§ 106-65.30. Inspectors; inspections and reports of violations; designation of resident agent.—For the enforcement of the provisions of this article, the State Commissioner of Agriculture is hereby authorized and empowered to appoint one or more qualified inspectors, the salaries and traveling expenses for whom shall be paid only from funds of the Commission. Said inspectors shall be known as "Structural Pest Control Inspectors of the State Department of Agriculture." The State Commissioner of Agriculture shall enforce compliance with the provisions of this article by making or causing to be made periodical and unannounced inspections of work done by individuals, firms, partnerships, corporations, associations, or any other organizations or any combination thereof, engaged in the business of structural pest control, wood-destroying organism control, or fumigation in the State of North Carolina, and it shall be the further duty of the inspectors of the State of North Carolina to promptly and diligently report to the State Commissioner of Agriculture all violations of the provisions of this article or of any other law now or hereafter enacted regulating or governing the practice of structural pest control, wood-destroying organisms control or fumigation or the operation of a structural pest control business in the State of North Carolina: Provided nothing herein contained shall be construed to authorize inspection of any property without the permission of the owner or occupant.

Every nonresident owner shall designate a resident agent upon whom service of notice or process may be made to enforce the provisions of this article or any liabilities arising hereunder. (1955, c. 1017.)

§ 106-65.31. Annual license fee; registration of solicitors and servicemen; identification card for employees.—The fee for the issuance of an annual license for any phase of structural pest control under this article shall be fifty dollars ($50.00); provided, that when or any time after the fee for a license for any one phase is paid, the holder of said license may secure a license for either or both of the other two phases for a fee of twenty-five dollars ($25.00) per license. Licenses shall expire on June 30 of each year and shall be renewable annually upon the payment of the required fee; provided, that if any license holder fails to renew said license before August 1 of each year, then he may be required to pay a penalty of ten dollars ($10.00), in addition to ordinary license fees. The license holder shall register with the Commissioner of Agriculture or his duly appointed representative the names of all solicitors and servicemen (not common laborers) and shall pay to said Commissioner a registration fee of one dollar ($1.00) at the time each name is registered, which shall be within 30 days after employment. All registrations expire when the license expires. Each employee for whom application is made and fee is paid shall be issued an identification card, which shall be carried on his or her person at all times when performing work. Said identification card shall be displayed upon demand to the person or persons for whom such work is being performed. The licensee shall be responsible for making application for an operator's identification card for any regularly employed serviceman, salesman or estimator.

It shall be unlawful for a serviceman, salesman, or estimator to actually engage in the performance of work covered by this article without having such identification card in his possession, provided that the licensee shall have 30 days after employing a serviceman, salesman, or estimator within which to apply for operator's identification card. The operator's identification card provided for hereunder shall be effective only while the serviceman, salesman, or estimator shall remain in the employ of the licensee making the original application. (1955, c. 1017; 1957, c. 1243, s. 4.)

§ 106-65.32. Proceedings and hearings under article; record of hearings and judgments; certified copy of revocation of license sent to clerk of superior court.—Proceedings under this article shall be taken by the Structural Pest Control Commission for matters within its knowledge or upon accusations based on information of another. Said accusation must be in writing and under oath, verified by the person making the same. If by a member of the Commission, he shall be disqualified from sitting in judgment at the hearing on said accusation. Upon receiving such accusation, the Commission shall serve notice by registered mail of the time, place of hearing, and a copy of the charges upon the accused at least 30 days before the date of the hearing. The Commission for sufficient cause, in its discretion, may postpone or continue said hearing from time to time, or if after proper notice no appearance is made by the accused, it may enter judgment at the time of hearing as prescribed herein, either by suspending or revoking the license of the accused. Both the Commission and the accused may have the benefit of counsel and the right to cross-examine witnesses, to take depositions and to compel attendance of witnesses as in civil cases by subpoena issued by the secretary of the Commission under the seal of the Commission and in the name of the State of North Carolina. The testimony of all witnesses at any hearing before the Commission shall be under oath or affirmation.

A record of all hearings and judgments shall be kept by the secretary of the Commission and in the event of suspension or revocation of license, the Commission shall, within ten days, transmit a certified copy of said judgment to the clerk of the superior court of the county of the residence of the accused or his resident agent, and the clerk shall file said judgment in the judgment docket of said county. (1955, c. 1017; 1957, c. 1243, s. 5.)

§ **106-65.33. Penalty for violation.** — Any person violating any of the provisions of this article or any rules or regulations made by the Commission pursuant to this article, shall be deemed guilty of a misdemeanor and upon conviction shall be punished as prescribed in § 14-3 of the General Statutes of North Carolina. (1955, c. 1017; 1957, c. 1243, s. 6.)

§ **106-65.34. Annual report to Governor.**—Annually as of July 1, the Commission shall submit to the Governor a report of its transactions of the preceding year, and shall also transmit to him a complete statement of the receipts and expenditures of the Commission, attested by affidavit of its chairman, a copy of which statement shall be filed with the Secretary of State. (1955, c. 1017.)

§ **106-65.35. Exceptions as to provisions for written examination by licensees.**—The provisions of this article as to examinations required of applicants for a business license shall not apply to any proposed licensee who has been actively engaged in and maintained a place of business for the purpose of controlling or exterminating insect pests, rodents, or control of wood destroying organisms by the use of chemicals, for a period of six months next preceding July 1, 1955, either as an owner, or designated person in charge of a place of business, and who is maintaining a place of business in the State of North Carolina July 1, 1955. The above provisions apply also to discharged service personnel or former members of the armed forces who apply for said business licenses within six months of their discharge if satisfactory evidence is submitted that the applicant was actively engaged in said work as set forth above in the State of North Carolina immediately preceding the beginning of such service with the armed forces. The above provisions as to the issuance of a license under this section shall be limited to the issuance of one license to a designated licensee at each business entity or branch office thereof, if said entity or branch office was in existence at least six months prior to July 1, 1955. (1955, c. 1017.)

Article 5.

Seed Cotton and Peanuts.

§ **106-66. Sale of seed cotton or peanuts.**—If any person shall buy, sell, deliver or receive for a price, or for any reward whatever, any cotton in the seed where the quantity is less than what is usually baled, or any peanuts, and shall fail to enter upon a book to be kept by him for such purpose, and to be open to inspection by the public at all business hours, the date of such buying or receiving, the number of pounds in each lot, the true name of the person or persons from whom bought or received and that he is the owner thereof, the name of the owner of the land on which such cotton is raised, and the price paid for the same per pound, he shall be guilty of a misdemeanor, and upon conviction be punished by a fine not exceeding fifty dollars or imprisoned not exceeding thirty days. In all prosecutions under this section it shall only be necessary for the State to allege and prove that the defendant bought or received the seed cotton or peanuts as charged, and the burden shall be upon the defendant to show that the provisions of this section have been complied with. (1887, c. 199; 1905, cc. 201, 523; Rev., s. 3812; C. S., s. 5083; 1929, c. 281, s. 1.)

Constitutionality.—As to constitutionality of statute similar to this section, see State v. Moore, 104 N.C. 714, 10 S.E. 143 (1889).

§ **106-67. Traveling seed cotton buyers must report; failure a misdemeanor.**—Any person engaged in traveling from house to house or from place to place buying or trading for seed cotton shall keep a correct record of the name and post-office address of each person from whom he buys or with whom he trades for seed cotton, together with the number of pounds he buys or trades for from each person and the amount paid in each case.

On or before the third day of each month such person shall file a sworn statement with the clerk of the superior court of the county in which he made such purchases or trades for seed cotton, showing the name and post-office address of each person from whom he bought or with whom he traded during the next preceding month, together with the amount paid and the number of pounds of such cotton received from each person.

Any person failing or refusing to comply with this section shall be guilty of a misdemeanor for each offense, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not more than thirty days. (1919, c. 43; C. S., s. 5084.)

Article 5A.

Marketing of Farmers Stock Peanuts.

§ 106-67.1. Purpose of article.—The purpose of this article is to promote fair trade practices among growers, handlers and buyers in the selling and buying of farmers stock peanuts, so as to ensure fair grading, weighing, labeling, inspecting and computing of purchase price. (1957, c. 1053, s. 1.)

§ 106-67.2. Licenses to buy peanuts required; purchases for seed excepted.—Each person, firm or corporation that buys one (1) ton or more of farmers stock peanuts from producers for his account or the account of others during any calendar year shall obtain a license from the Commissioner of Agriculture each year to conduct such business. This article shall not apply to purchasers who buy peanuts for seed purposes only. (1957, c. 1053, s. 2.)

§ 106-67.3. Issuance of license; fee; effective period; use of fees collected. — (a) The Commissioner of Agriculture shall issue a license to any person, firm or corporation desiring to buy farmers stock peanuts upon the receipt of a prescribed application accompanied by a ten dollar ($10.00) license fee; provided, however, that the Commissioner may withhold the issuance of a license to any applicant who has been convicted of violating any provision of this article until the Commissioner has been given reasonable assurance that the applicant will comply with the provisions of this article and the rules and regulations adopted pursuant thereto.

(b) The effective period of the license shall be from July 1 through June 30 of each year.

(c) The moneys collected for license fees shall be used only for the administration and enforcement of the provisions of this article. (1957, c. 1053, s. 2.)

§ 106-67.4. Advisory Committee. — The Commissioner of Agriculture shall appoint an Advisory Committee consisting of five members: Two members to represent North Carolina peanut growers, at least one of whom shall represent the membership of the North Carolina Peanut Growers' Association; one member to represent the Cooperative Marketing Association serving the peanut growers of North Carolina; one member to represent the North Carolina peanut commission buyers; and one member to represent the peanut millers and shellers of North Carolina. The term of office of each member shall commence on July 1 of each year, or as soon thereafter as he is appointed and continue to the following June 30.

The duties of this Committee shall be to act in an advisory capacity to the Commissioner of Agriculture and the North Carolina State Board of Agriculture in formulating rules and regulations and in other matters relating to the administration of this article. (1957, c. 1053, s. 3.)

§ 106-67.5. False certificates, etc.; false representations. — It shall be unlawful for any person, firm or corporation knowingly to falsely make, issue, alter, forge or counterfeit any official certificate, memorandum, or falsely represent the weight, grade, class, quantity or condition or to knowingly represent that the peanuts have been officially inspected or graded (by an authorized government inspector or grader) when such product in fact has not been so graded or inspected. (1957, c. 1053, s. 4.)

§ **106-67.6. Inspections and investigations by Commissioner.**—In order to carry out the purposes of this article effectively, the Commissioner of Agriculture is authorized to inspect or investigate transactions for the sale or delivery of farmers stock peanuts to persons acting as handlers; to require verified reports and accounts of all authorized handlers; to examine books, accounts, memoranda, equipment, warehouses, storage and other facilities and articles connected with the business of handlers of farmers stock peanuts. (1957, c. 1053, s. 5.)

§ **106-67.7. Rules and regulations.**—The North Carolina State Board of Agriculture is hereby authorized to adopt such reasonable rules and regulations as may be necessary for the proper administration and enforcement of this article. (1957, c. 1053, s. 6.)

§ **106-67.8. Penalty; suspension of license.**—Any person, firm or corporation violating any provision of this article, or any regulation adopted pursuant to this article, shall be guilty of a simple misdemeanor punishable by a fine of not more than fifty dollars or imprisonment for not more than thirty days, in the discretion of the court.

The Commissioner of Agriculture is hereby authorized to suspend the license of any person, firm or corporation, upon being convicted of violating any provision of this article, for any period of the remaining part of the licensed year within his discretion. (1957, c. 1053, s. 7.)

ARTICLE 6.

Cottonseed Meal.

§ **106-68. Cottonseed meal defined; inspection tax.**—Cottonseed meal is a product of the cottonseed only, composed principally of the kernel with such portion of the fiber or hull and oil as may be left in the course of manufacture of cottonseed oil, and when sold for use as fertilizer or feed shall be subject to an inspection tax of twenty-five cents per ton and be subject to inspection as other fertilizers or fertilizing materials, unless sold to manufacturers for use in manufacturing fertilizers or feed. (1917, c. 242, s. 1; C. S., s. 4704; 1939, c. 286.)

§ **106-69. Bags to be branded with specified particulars.**—All cottonseed meal offered for sale, unless sold to manufacturers for use in manufacturing fertilizers or feed, shall have plainly branded on the bag containing it, or on the tag attached thereto, the following data:

(1) Cottonseed meal (with brand and grade).
(2) Weight of package.
(3) Ammonia and protein.
(4) Name and address of manufacturer. (1917, c. 242, s. 2; C. S., s. 4705.)

§ **106-70. Grades and standards established.** — No person, firm, or corporation shall offer for sale any cottonseed meal except as provided in § 106-69, graded and classed as follows:

(1) Prime cottonseed meal by analysis must contain at least seven and one half percent of ammonia or thirty-eight and fifty-six one-hundredths percent of protein.
(2) Good cottonseed meal by analysis must contain at least seven percent of ammonia, or thirty-six and no one-hundredths percent of protein.
(3) Ordinary cottonseed meal by analysis must contain at least six and one

half percent of ammonia, or thirty-three and forty-four hundredths per cent of protein. (1917, c. 242, s. 3; C. S., s. 4706.)

Purpose.—The purpose of this article is to promote agriculture by insuring the sale of fertilizers containing plant food in certain proportions and of sufficient quality and quantity and to protect those who cultivate the soil from imposition and fraud. State v. Faulkner, 175 N.C. 787, 95 S.E. 171 (1918).

§ 106-71. Rules to enforce statute; misdemeanor. — The Board of Agriculture is empowered and directed to make such rules and regulations as are necessary to a proper carrying into effect of the provisions of this article, and to provide for all such tags as manufacturers may demand, upon paying the tax therefor. Any person willfully violating any of the regulations made by the Board of Agriculture in connection with the provisions of this article shall be guilty of a misdemeanor. (1917, c. 242, s. 4; C. S., s. 4707.)

§ 106-72. Sales without tag; misuse of tag; penalty; forfeiture. —Every merchant, trader, manufacturer, or agent who shall sell or offer for sale any cottonseed meal without having attached thereto such labels, stamps, and tags as are required by law, or who shall use the required tag a second time to avoid the payment of the tonnage charge, and every person who shall aid in the fraudulent selling or offering for sale of any cottonseed meal, shall be liable to a penalty of the price paid the manufacturer for each separate bag, barrel, or package sold, offered for sale, or removed, to be recovered by the Commissioner of Agriculture by suit brought in the name of the State, and any amount so recovered shall be paid one half to the informant and one half to the State Treasurer for the use of the Department of Agriculture. If any such cottonseed meal shall be condemned, as provided by law, it shall be the duty of the Department to have an analysis made of the same; cause printed tags or labels expressing the proper grade to be put upon each bag, barrel, or package, and shall fix the commercial value at which it may be sold; and it shall be unlawful for any person to sell, offer for sale, or remove any such cottonseed meal, or for any agent of any railroad or other transportation company to deliver any such cottonseed meal in violation of this section. (1917, c. 242, s. 4; C. S., s. 4708.)

Penalty Not Applicable to Purchaser.—In construing a former statute of similar import, it was held that the penalty applies to the manufacturer or anyone, either as principal or agent, who sells or offers to sell, or removes the fertilizer, and the word "revoke" does not apply to the purchaser who receives the fertilizer not for sale, but for use, and when the only removal by him is taking the fertilizer from the railroad station and then distributing the same under his crops. Johnson v. Carson, 161 N.C. 371, 77 S.E. 307 (1913).

§ 106-73. Sales contrary to article a misdemeanor. — Any person, firm, or corporation who shall sell or offer for sale or shall act as agent of or broker for the manufacturer of or dealer in any cottonseed meal contrary to the provisions above set forth shall be guilty of a misdemeanor. (Rev., s. 3814; 1917, c. 242, s. 5; 1919, c. 13, s. 2; C. S., s. 4709.)

Liability.—The fact that neither knowledge of the defect nor intent to defraud is made an element in the criminal offense is strong reason for confining the statute to the manufacturer, who should be held to have knowledge of the composition of the fertilizer he offers for sale, and to the owner, not a manufacturer, and his agent with authority to sell, who have the opportunity to test the fertilizer before they sell it. State v. Faulkner, 175 N.C. 787, 95 S.E. 171 (1918).

Applied in State v. Southern Cotton Oil Co., 154 N.C. 635, 70 S.E. 741 (1911).

§ 106-74. Forfeiture for unauthorized sale; release from forfeiture. —All cottonseed meal sold or offered for sale contrary to the provisions above set forth shall be subject to seizure, condemnation, and sale by the Commissioner of Agriculture. The net proceeds from such sale shall be placed in the general fund of the Department and accounted for upon its books. The Commissioner, however, shall have the discretion to release the meal so seized and condemned upon compliance with the law as set forth above and the payment of all costs and expenses incurred by the Department in any proceedings connected therewith. (1917, c. 242, s. 5; C. S., s. 4710.)

§ **106-75. Method of seizure and sale on forfeiture.** — Such seizure and sale shall be made under the direction of the Commissioner of Agriculture by an officer or agent of the Department; the sale to be made at the courthouse door in the county in which the seizure is made, after thirty days advertisement in some newspaper published in said county, or if no newspaper is published in said county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the grade of the meal, the quantity, why seized and offered for sale. (1917, c. 242, s. 5; C. S., s. 4711.)

§ **106-76. Collection and analysis of samples.** — The Department of Agriculture shall have the same authority and powers for taking and analyzing samples of cottonseed meal as are provided in case of commercial fertilizers and fertilizer materials; and the same procedure as to law and regulations shall be followed in taking such samples of cottonseed meals as are prescribed and followed for taking samples of fertilizer and fertilizer materials. (1919, c. 271; C. S., s. 4712.)

§ **106-77. Sales below guaranteed quality; duties of Commissioner.** —When the Commissioner of Agriculture shall be satisfied that any cottonseed meal is five percent below the guaranteed analysis, it shall be his duty to assess twice the value of said deficiency against the manufacturer, and if said cottonseed meal shall fall as much as ten percent below the guaranteed analysis it shall be his duty to assess three times the value of said meal and require that his findings of said deficiency be made good to all persons who, in the opinion of the Commissioner, have purchased the said meal; and the Commissioner may seize any meal belonging to said company, to the value of the deficiency, if the deficiency shall not be paid within thirty days after notice to the company. If the Commissioner shall be satisfied that the deficiency in analysis was due to intention or fraud of the manufacturer, then the Commissioner shall assess and collect from the manufacturer twice the amount above provided for and pay over the same to parties who purchased said meal. If any manufacturer shall resist such collection or payment, the Commissioner shall immediately publish the analysis and the facts in the Bulletin and in such newspapers in the State as he may deem necessary. (1917, c. 242, s. 7; C. S., s. 4713.)

§ **106-78. Adulteration prohibited.**—It shall be unlawful for any manufacturer to adulterate cottonseed meal in the process of manufacture or otherwise. (1917, c. 242, s. 8; C. S., s. 4714.)

Article 7.

Pulverized Limestone and Marl.

§ **106-79. Board of Agriculture authorized to make and sell lime to farmers.**—The North Carolina Board of Agriculture is authorized and directed, for the purpose of furnishing marl or limestone to the farmers of the State, to make such arrangements as they deem advisable for this purpose, and to this end may lease or purchase oyster shells in large quantities and beds of limestone, and erect machinery suitable for the preparation of the material for use by the farmers; and any lime so prepared and any by-products shall be sold for agricultural purposes to the citizens of the State at a reasonable cost which shall produce an amount of money sufficient to maintain and operate the plant. (1919, c. 182, s. 1; C. S., s. 4715.)

§ **106-80. Convict labor authorized.** — With the approval of the Governor, when requested by the Board of Agriculture, the chairman of the State Highway Commission may furnish a superintendent with a squad of able-bodied convicts, not to exceed fifty, to do such work as the Commissioner, with the authority of the Board, may deem necessary to mine, prepare, load and dispose of the material. The Board shall pay the State quarterly such amount as shall be agreed upon by the chairman of the State Highway Commission and the Board of Agriculture for their work, out of the proceeds of the sales, and the State shall guard, feed, clothe, and work such convicts: Provided, that after the first year's operations the expenses of the work shall not exceed the amount of the sales. (1919, c. 182, s. 2; C. S., s. 4716; 1933, c. 172, s. 18; 1957, c. 65, s. 11.)

Article 8.

Sale, etc., of Agricultural Liming Material, etc.

§ **106-81. Regulation of sale, etc., of agricultural liming material, etc.** — All agricultural liming material, agricultural liming material with potash, and land plaster, hereinafter named either as the aforesaid separate items, or collectively as "materials coming under this article," or as "said materials," to be sold, offered, or exposed for sale in this State, shall be subject to regulation as provided by the following sections of this article. (1941, c. 275, s. 1.)

§ **106-82. Registration of brands by manufacturers and vendors.**— Every manufacturer or vendor proposing to sell, offer or expose for sale in this State, the materials coming under this article shall, annually on or before the first day of January of each year, or before offering said materials for sale in this State, register with the Commissioner of Agriculture, on forms to be furnished by said Commissioner, each brand of the said materials that he proposes to offer for sale during the next ensuing calendar year, or remainder thereof, giving for each brand the information prescribed in the following subdivisions:

(1) Net weight when sold in packages.
(2) A brand or trade name truly descriptive of the product.
(3) The guaranteed analysis showing:

  a. In case of agricultural liming materials, the minimum percent of calcium expressed as calcium carbonate ($CaCO_3$) and of magnesium expressed as magnesium carbonate ($MgCO_3$) if the product be unburned or a mixture of both burned and unburned material; or as calcium oxide (CaO) and magnesium oxide (MgO) if the product be in the burned state and, in either case, the total neutralizing value expressed as calcium carbonate equivalent or neutralizing equivalent, and the fineness of the material, excepting that guarantee of screen analysis shall not be required for the products from completely burned limestone or shells. (The terms "calcium carbonate equivalent" and "neutralizing equivalent," for the purpose of this article, shall mean one and the same thing. Fineness shall be determined by screens complying with the specifications of the United States Bureau of Standards.)

  b. In case of agricultural liming material with potash, the same requirement as for agricultural liming material, subdivision (3) a of this section, but including also the minimum percent of available potash as the oxide (K_2O). (The potash content of agricultural liming material with potash shall not be below four percent, and the guarantee for said potash content shall be in whole numbers only.)

  c. In case of land plaster, the minimum percent of calcium sulfate ($CaSO_4$).

(4) The name and address of the manufacturer or vendor guaranteeing the registration.

(5) In case of combinations of materials from different sources, the source, chemical form, and minimum percent of each material in truly descriptive terms. (1941, c. 275, s. 2.)

§ 106-83. Labeling.—All of the said materials sold, offered, or exposed for sale in this State shall have attached thereto, or be accompanied by a plainly printed statement giving the information as required under § 106-82, subdivisions (1), (2), (3), (4) and (5). In case of materials sold in packages, the said information shall be plainly printed upon the package, or upon a tag or label attached thereto, of such quality and in such manner that it shall withstand normal handling, and, in case of material sold in bulk, the said statement shall be delivered to the purchaser either with the material, or with the invoice therefor. (1941, c. 275, s. 3.)

§ 106-84. Registration and tonnage fees; tags showing payment; reporting system; license certificates.—(a) For the purpose of defraying expenses connected with the registration, inspection and analysis of the materials coming under this article, there shall be paid, by the manufacturers or vendors, to the Department of Agriculture, for each brand or grade of said materials registered as required under § 106-82, an annual registration fee of five dollars ($5.00) for each calendar year or part thereof, said fee to be paid at the time of registration.

(b) Likewise, in addition to the above stated registration fee there shall be paid upon said materials sold in this State, in the manner specified under subsection (c) of this section, tonnage fees as follows: For agricultural liming material, five cents per ton; for agricultural liming material with potash, twenty-five cents per ton; and for land plaster, five cents per ton; excepting that these fees shall not apply to materials which are sold to fertilizer manufacturers for the sole purpose of use in the manufacture of fertilizer.

(c) Each bag, parcel, or shipment of said materials shall have attached thereto a tag, or label, to be furnished by the Department of Agriculture, stating that all charges specified in this article have been paid, and the Commissioner of Agriculture, with the advice and consent of the Board of Agriculture is hereby empowered to prescribe a form for such tags, or labels, and to adopt such regulations as will insure enforcement of this article. Whenever any manufacturer or vendor shall have paid the required charges, his goods shall not be liable to any further tax, whether by city, town or county. Tax tags or labels shall be issued each year by the Commissioner of Agriculture, and sold to persons applying for same at the tax rate provided herein. Tags or labels left in the possession of persons registering the materials coming under this article, at the end of a calendar year, may be exchanged for tags or labels for the next succeeding year.

Any manufacturer, importer, jobber, firm, corporation or person who distributes materials coming under this article in this State may make application for a permit to report the materials sold and pay the tonnage fees as set forth in subsection (b) of this section, as the basis of said report, in lieu of affixing inspection tags or labels. The Commissioner of Agriculture may, in his discretion, grant such permit. The issuance of all permits will be conditioned on the applicant's satisfying the Commissioner that he has a good bookkeeping system and keeps such records as may be necessary to indicate accurately the tonnage of liming materials, etc., sold in the State and as are satisfactory to the Commissioner of Agriculture, and granting the Commissioner, or his duly authorized representative, permission to examine such records and verify the statement. The report shall be quarterly and the tonnage fees shall be due and payable quarterly, on or before the tenth day of January, April, July, and October of each year, covering the tonnage of liming materials, etc., sold during the preceding quarter. The report shall be under oath and on forms furnished by the Commissioner. If the report is not filed and the tonnage fees paid by the tenth day following the date due or if the report be false, the Commissioner may revoke the permit, and if the tonnage fees be unpaid after a fifteen day grace period, the amount shall bear a penalty of ten percent which shall be added to the tonnage fees due and shall constitute a debt and become the basis of judgment against the securities or bonds which may be required. In order to guarantee faithful performance with the provisions of this paragraph each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with the Commissioner cash in the amount of two hundred fifty dollars ($250) or securities acceptable to the Commissioner of a value of at least two hundred fifty dollars ($250) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The Commissioner shall approve all such securities and bonds before acceptance.

(d) To manufacturers or vendors of the materials covered in this article, who have registered their brands of the said materials and paid registration fees as required herein, shall be issued by the Commissioner of Agriculture, without further charge, certificates licensing said manufacturers or vendors, themselves or through their agents, to sell in this State the brands of materials named in said certificate, for the period of time designated therein. (1941, c. 275, s. 4; 1949, c. 828.)

§ **106-85. Report of sales.**—In addition to the statement required under § 106-82, each manufacturer or vendor of the materials covered in this article shall, on or before the first day of February of each year, file with the Department of Agriculture a written report showing the total number of net tons of each brand and grade of the said materials sold by him, or his representatives or agents in this State, during the last preceding year. License for the sale of said materials within this State shall not be issued for a succeeding year to any manufacturer or vendor for the continued sale of his product unless and until said report has been made. (1941, c. 275, s. 5.)

§ **106-86. Administration; inspections, sampling and analysis.** — It shall be the duty of the Commissioner of Agriculture to institute the necessary proceedings and have prepared the necessary equipment to put into effect the provisions of this article, and to authorize the collecting of official samples of the materials covered by it, to have them analyzed, and to have results published for the information of the public. For this purpose such inspectors or representatives as he may duly authorize shall have full access, ingress and egress to and from all places of business, manufacture, storage, transportation, handling or sale of any of the said materials. They shall also have power to open any container or package containing or supposed to contain any of the said materials, and to take therefrom samples for analysis. The official methods and recommendations of the Association of Official Agricultural Chemists as to sampling and analyzing shall be used in administering this article. (1941, c. 275, s. 6.)

§ **106-87. Deficiencies; refunds to consumers.**—Should any of the materials coming under this article be found, by procedures authorized thereunder, to be deficient in the constituents as claimed by the manufacturer or vendor thereof, said manufacturer or vendor, upon being officially notified of such deficiency, by the Commissioner of Agriculture, shall, within ninety days following such notification, make refunds to the consumers of the deficient materials as follows: In case of "agricultural liming material" or "agricultural liming material with potash," excepting potash deficiency of the latter, if the deficiency be five percent or more, there shall be refunded an amount equal to three times the value of such deficiency. In case of "potash" deficiency in "agricultural liming material with potash," there shall be refunded an amount equal to three times the value of the deficiency, if such deficiency is in excess of forty points (which shall mean 0.40 of one percent) on goods guaranteed four percent; fifty points (which shall mean 0.50 of one percent) on goods that are guaranteed five percent up to and including eight percent; and sixty points (which shall mean 0.60 of one percent) on goods guaranteed nine percent and up to and including twenty percent; and one hundred points (which shall mean 1.00 percent) on goods guaranteed over twenty percent; and in case of land plaster, for deficiencies in excess of one percent, there shall be refunded an amount equal to three times the value of the deficiency. Values shall be based on the selling price of said materials. When said consumers cannot be found within the above specified time, refunds shall be forwarded to the Commissioner of Agriculture for deposit with the State Treasurer to the credit of the Department of Agriculture, where said refund shall be held for payment to the proper consumer upon order of said Commissioner. Where the consumer to whom the refund is due cannot be found within a period of two years, such refund shall, after said period, revert to the Department of Agriculture for expenditure by said Commissioner in promoting the agricultural program of the State. (1941, c. 275, s. 7.)

§ **106-88. Violations and penalties.** — Any person or persons selling, offering or exposing for sale in this State any of the materials covered in this article, without first having registered said materials, paid the fees required, secured the required license, and otherwise complied with the requirements of this article; or who shall have caused to be submitted, or to be associated with said registrations or materials, false, fraudulent, or misleading statements; or who shall have caused to be incorporated into said materials any substances which shall be harmful to plants or plant growth; shall be guilty of a misdemeanor, and on conviction shall be sentenced to pay a fine not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) for the first offense and not less than one hundred dollars for each subsequent offense. (1941, c. 275, s. 8.)

§ **106-89. Certified analysis as evidence.**—In the trial of any suit or action wherein there is called in question the value of composition of any of the materials covered by this article, a certified statement of the analysis made by the chemists of the Department of Agriculture shall be admissible as prima facie evidence of the content, value, or composition of said materials. (1941, c. 275, s. 9.)

§ **106-90. Revocation of licenses; seizure of materials.** — The Commissioner of Agriculture is hereby authorized to revoke any license and require forfeit of fees paid under such license when it is ascertained that the registration upon which said license was issued has given false information in its statement relative to the kind, quality, composition or fineness of the materials sold, or offered for sale, under the provisions of this article; and to seize and withhold from sale or distribution any such materials where it is shown that they are being dispensed in violation of said article. (1941, c. 275, s. 10.)

§ **106-91. Regulations and standards.** — The Commissioner of Agriculture, under the authority of the Board of Agriculture, is further empowered to prescribe and enforce such reasonable rules and regulations relating to the sale of the materials covered in this article as are consistent with the purpose of the article and are deemed necessary to carry into effect its full intent and meaning; and, conjointly with the State Board of Agriculture and the director of the North Carolina experiment station, to formulate and prescribe such definitions and standards as may be required for said purpose. (1941, c. 275, s. 11.)

Editor's Note. — Session Laws 1955, c. 276, s. 1, changed "agricultural experiment station," as used in § 106-15, to read "agricultural research station."

§ **106-92. Construction of article.**—Nothing in this article shall be construed to restrict or avoid sales or exchanges of the materials coming under this article to each other by importers, manufacturers or manipulators who mix said materials for sale, or as preventing the free and unrestricted shipments of said materials to manufacturers or manipulators who have registered their brands as required by the provisions of this article. (1941, c. 275, s. 12.)

Article 9.

Commercial Feeding Stuffs.

§ **106-93. Purpose of article.**—The purpose of this article is to protect a farmer-buyer from the manufacturer-seller of concentrated, commercial feeds who might sell substandard or mislabeled feedstuff, and not to protect from himself a farmer who mixes his own feed. (1965, c. 799, s. 1.)

Editor's Note. — Former § 106-93 has been redesignated as § 106-93.1 by the act inserting the present section.

Implied Warranty. — Under the provisions of this section and §§ 106-95 and 106-100, there is an implied warranty that foodstuff sold for cattle is reasonably fit for the purpose intended, and that it is not composed of harmful or deteterious substances that will produce injury or death to the cattle fed therewith. Poovy v. International Sugar Co., 191 N.C. 722, 133 S.E. 12 (1926).

§ **106-93.1. Packages to be marked with statement of specified particulars; methods of analysis.** — Every lot or parcel of concentrated commercial feeding stuff sold, offered or exposed for sale or distributed within this State shall have affixed thereto or printed thereon, in a conspicuous place on the outside thereof, a legible and plainly printed statement in the English language clearly and truly certifying the weight of the package; the name, brand, or trademark under which the article is sold; the name and address of the manufacturer, jobber, or importer; the names of each and all ingredients of which the article is composed; a guarantee that the contents are pure and unadulterated, and a statement of the maximum percentage it contains of crude fiber, and the percentage of crude fat, and the percentage of crude protein: Provided, that minerals and other materials not valuable for their protein and fat content shall be labeled in accordance with rules and regulations promulgated by the State Board of Agriculture. The method of analysis shall be those adopted as official by the Board of Agriculture and shall conform to sound laboratory practices as evidenced by methods prescribed by the Association of Official Agricultural Chemists of the United States. In the absence of methods prescribed by the Board, the Commissioner shall prescribe the methods of analysis. (1909, c. 149, s. 1; C. S., s. 4724; 1949, c. 638, s. 1; 1953, c. 698, s. 3; 1955, c. 868, s. 1; 1965, c. 799, s. 2.)

Editor's Note. — Prior to the 1965 amendment this section was designated as § 106-93. The 1965 amendment also inserted "or distributed" near the beginning of this section.

§ **106-94. Weight of packages.** — All concentrated commercial feeding stuffs, except that in bags or packages of five pounds or less, shall be in such standard weight bags or packages as the Board of Agriculture by regulation shall prescribe. (1909, c. 149, s. 1; C. S., s. 4725; 1943, c. 225, s. 1; 1953, c. 1113; 1963, c. 1089, s. 1.)

Editor's Note.—The 1963 amendment rewrote this section.

Section 6 of Session Laws 1943, c. 225, which act amended not only this section but also amended §§ 106-96, 106-102 and 106-106 and inserted §§ 106-97.1 and 106-102.1, provides that the act shall not repeal or nullify any of the provisions of the Uniform Weights and Measures Act (§ 81-1 et seq.) or any rules and regulations promulgated pursuant thereto.

Stated in State ex rel. Graham v. Nash Johnson & Sons' Farms, 263 N.C. 66, 138 S.E.2d 773 (1964).

§ **106-95. "Commercial feeding stuffs" defined.** — The term "commercial feeding stuffs" shall be held to include the so-called mineral feeds and all feeds used for livestock, domestic animals and poultry, except cottonseed hulls, whole unground hays, straws and corn stover, when the same are not mixed with other materials, nor shall it apply to whole unmixed, unground and uncrushed grains or seeds when not mixed with other materials. (1909, c. 149, s. 2; C. S., s. 4726; 1939, c. 354, s. 1; 1949, c. 638, s. 2.)

Quoted in State ex rel. Graham v. Nash Johnson & Sons' Farms, 263 N.C. 66, 138 S.E.2d 773 (1964).

§ 106-95.1. Customer formula feed.—A "customer formula feed" is a feed, each batch of which is mixed according to the formula of the customer, furnished in writing over the signature of the customer or his designated agent, not to be stocked or displayed in sales areas and not to be sold commercially by any person, firm or corporation in the course of his or its regular business. (1959, c. 1057, s. 1; 1965, c. 799, s. 3.)

Editor's Note. — The 1965 amendment rewrote this section.

Former Section Exempted from Inspection Tax Custom-Mixed Feed. — See State ex rel. Graham v. Nash Johnson & Sons' Farms, 263 N.C. 66, 138 S.E.2d 773 (1964).

§ 106-96. Copy of statement and sample filed for registration.—Each and every manufacturer, importer, jobber, agent, or seller, before selling, offering or exposing for sale or distributing in this State any concentrated commercial feeding stuff, shall, for each and every feeding stuff, file for registration with the Commissioner of Agriculture a copy of the statement required in § 106-93.1, and accompany said statement, on request, by a sealed glass jar or bottle containing at least one pound of such feeding stuff to be sold, exposed or offered for sale, which sample shall correspond within reasonable limits to the feeding stuff which it represents in the percentages of crude protein, crude fat, crude fiber, and carbohydrates which it contains. For each and every statement so filed, there shall be paid to the Commissioner of Agriculture an annual registration fee of one dollar ($1.00), payable at the time of registration: Provided, that for each brand of commercial feeding stuff marketed in packages of five pounds or less, there shall be paid to the Commissioner of Agriculture an annual registration fee of twenty-five dollars ($25.00): Provided, further, that manufacturers, importers, jobbers, agents, or sellers who pay the twenty-five dollars ($25.00) registration fee prescribed by the above provision on any feeding stuff, shall not be liable for the tonnage fee, prescribed by § 106-99, on the feeding stuff on which said twenty-five dollar ($25.00) fee is paid.

All registration fees are payable at the time of registration, and shall be payment in full of registration fees through December thirty-first of the year in which paid. All such feeds must be registered anew each year: Provided, that nothing in this section shall be construed as applying to grain or other feed materials supplied by a farmer and used in custom-mixed feed as defined in G.S. 106-95.1. (1909, c. 149, s. 3; C. S., s. 4727; 1939, c. 354, s. 2; 1943, c. 225, s. 2; 1959, c. 1057, ss. 2, 3; 1965, c. 799, s. 4.)

Editor's Note. — The 1965 amendment inserted "or distributing" near the beginning of the first paragraph.

Custom-mixed feed is no longer defined in § 106-95.1. That section now defines customer formula feed.

The law requires concentrated, commercial feed to be registered with the Commissioner of Agriculture, and an analysis to be furnished him. State ex rel. Graham v. Nash Johnson & Sons' Farms, 263 N.C. 66, 138 S.E.2d 773 (1964).

§ 106-97. Agent released by statement of manufacturer. — When a manufacturer, importer, or jobber of any concentrated commercial feeding stuffs files a statement, as required by § 106-96, no agent or seller of such manufacturer, importer, or jobber, shall be required to file such statement. (1909, c. 149, s. 4; C. S., s. 4728.)

§ 106-97.1. Registrants required to furnish Commissioner with statement of tonnage sold in this State. — Each person registering feeding stuff under this article shall furnish the Commissioner of Agriculture with a written statement of the tonnage of each grade or brand of feed sold by him in this State. This statement shall include all sales for the periods from January first to and including December thirty-first of each year. If the above statement is not made within thirty days from the date of notification by the Commissioner, he may, in his discretion, invoke a penalty of not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00) on, or cancel the registration of, any person failing to so comply. The Commissioner, however, in his discretion, may grant a reasonable extension of time. (1943, c. 225, s. 3.)

Cross Reference.—See note to § 106-94.

§ **106-98. Power to refuse or to cancel registration.**—The Commissioner of Agriculture shall have the power to refuse the registration of any concentrated commercial feeding stuff under a name which would be misleading as to the materials of which it is composed, or when the names of each and all ingredients of which it is composed are not stated, or where it does not comply with the standards and rulings adopted by the Board of Agriculture. Should any concentrated commercial feeding stuffs be registered and it is afterwards discovered that they are in violation of any of the provisions of this article, the Commissioner of Agriculture shall have the power to cancel such registration. (1909, c. 149, s. 5; C. S., s. 4729.)

§ **106-99. Inspection fee on commercial feeding stuffs.** — Each and every manufacturer, importer, jobber, agent, seller, or distributor of any concentrated commercial feeding stuffs, as defined in this article, shall pay to the Commissioner of Agriculture an inspection fee of twelve cents (12¢) per ton for each ton of such commercial feeding stuffs sold, offered or exposed for sale or distributed in this State. This shall apply to all commercial feeding stuffs furnished, supplied or used for the growing or feeding under contract or ageement, of livestock, domestic animals and poultry, and shall also apply to any feeding stuffs which are produced by the purchase of grain or other materials and the grinding and mixing of same with concentrated commercial feeding stuffs being used as a supplement or base. The requirements of this section, however, are subject to the following conditions:

(1) If the concentrated commercial feeding stuffs, used as a supplement or a base, has already been assessed under this article and the inspection fee paid, then the amount paid shall be deducted from the gross amount of fee due on the total feeding stuffs produced.

(2) Only concentrates and so-called mineral feeds used in manufacturing customer formula feed shall be subject to the inspection fee as provided in this article.

(3) Whenever any concentrated commercial feeding stuff is kept for sale in bulk, stored in bins or otherwise, the manufacturer, dealer, jobber, or importer keeping the same for sale shall keep on hand cards of proper size, upon which the statement required in § 106-93.1 is plainly printed; and if the feeding stuff is sold at retail in bulk, or if it is put up in packages belonging to the purchaser, the manufacturer, dealer, jobber, or importer shall furnish the purchaser with one of said cards upon which is or are printed the statement or statements described in this section, except that "customer formula feed" shall be labeled by invoice as follows:

The invoice, which is to accompany delivery and be supplied to the customer at the time of delivery, shall bear the following information:

a. Name and address of the manufacturer.
b. Name and address of the customer.
c. Date of sale.
d. The product name and brand, if any, and number of pounds of

each registered commercial feed used in the mixture and the name and number of pounds of each other feed ingredient added; unless the invoice carries a code which identifies a formula on file with the manufacturer.

If a customer formula feed contains a nonnutritive substance which is used or intended for use in the diagnosis, cure mitigation, treatment or prevention of disease or which is intended to affect the structure or any function of the animal body, the invoice shall show the amount present, directions for use, and/or warnings against misuse of the feed.

(4) Manufacturers of registered feeds may apply for, and the Commissioner in his discretion may issue, numbered permits authorizing manufacturers of registered feeds to purchase commercial feeding stuffs, as defined in G.S. 106-95, and the responsibility for the payment of the inspection fee assessed by the provisions of this article will be assumed by the purchaser to whom such permit has been issued. The Commissioner may in his discretion, and without notice, cancel any permit issued under the provisions of this section.

The use of permits issued under the provisions of this section shall be governed by rules and regulations promulgated by the Commissioner. (1909, c. 149, s. 6; C. S., s. 4730; 1939, c. 286; 1949, c. 638, s. 3; 1953, c. 698, s. 1; 1955, c. 868, s. 2; 1959, c. 1057, ss. 4-8; 1965, c. 799, s. 5.)

Editor's Note. — The 1965 amendment rewrote this section, which formerly provided for an inspection tax.

Fee Imposed to Finance Cost of Administering Article. — See State ex rel. Graham v. Nash Johnson & Sons' Farms, 263 N.C. 66, 138 S.E.2d 773 (1964).

What Constitutes Furnishing Feed.— Defendant is not distributing feed or furnishing feed for the growing of poultry under contract within the meaning of this section when it transfers feed from its own mill to its own bins for use in feeding its own chickens, even though they are "growing out" on the lands of its employees. State ex rel. Graham v. Nash Johnson & Sons' Farms, 263 N.C. 66, 138 S.E.2d 773 (1964).

Duty of Purchaser to Minimize Loss.— Upon a purchase of feeding stuff, below grade and without tags, it is the duty of the purchaser to do what he reasonably can to lessen his loss. Jennette & Co. v. City Hay & Grain Co., 158 N.C. 156, 73 S.E. 884 (1912).

The measure of such purchaser's damages is the difference in value of the goods as it actually is and which it should have been under his contract, and such other expenses as were actually incurred by him in handling it. Jennette & Co. v. City Hay & Grain Co., 158 N.C. 156, 73 S.E. 884 (1912).

§ **106-99.1. Reporting system.** — Each manufacturer, importer, jobber, firm, corporation, or person who sells or distributes concentrated commercial feeding stuffs in this State shall make application to the Commissioner of Agriculture for a permit to report the tonnage of feeding stuffs sold and shall pay to the North Carolina Department of Agriculture an inspection fee of twelve cents (12¢) per ton. The Commissioner of Agriculture is authorized to require each such distributor to keep such records as may be necessary to indicate accurately the tonnage of feeding stuffs sold in the State, and as are satisfactory to the Commissioner of Agriculture. Such records shall be available to the Commissioner, or his duly authorized representative, at any and all reasonable hours for the purpose of making such examination as is necessary to verify the tonnage statement and the tax paid. Each and every distributor shall report the tonnage sold monthly on forms furnished by the Commissioner. Such reports shall be made and the inspection fee shall be due and payable monthly on the tenth day of each month covering the tonnage and kind of commercial feeding stuffs sold during the preceding month. If the report is not filed and the inspection fee paid by the tenth day following the date due or if the report of tonnage be false, the Commissioner may revoke the permit, and if the inspection fee be unpaid after the fifteen-day grace period, the amount shall bear a penalty of ten percent (10%) which shall be added to the inspection fee due and shall constitute a debt and become the basis of judgment against the securities or bond which may be required. In order to guarantee faithful performance with the provisions of this section each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with the Commissioner cash in the amount of five hundred dollars ($500.00) or securities acceptable to the Commissioner of a value of at least five hundred dollars ($500.00) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The Commissioner shall approve all such securities and bonds before acceptance. (1909, c. 149, s. 6; C. S., s. 4730; 1939, c. 286; 1949, c. 638, s. 3; 1955, c. 868, s. 3; 1959, c. 1057, s. 9; 1963, c. 1089, s. 2; 1965, c. 799, s. 6.)

Editor's Note. — The 1963 amendment inserted the words "sells or" near the beginning of the first sentence and deleted the words "under oath and" between "monthly" and "on forms" in the fourth sentence.

The 1965 amendment substituted "fee of twelve cents (12¢)" for "tax of twenty-five cents (25¢)" in the first sentence.

§ **106-100. Sale without complying with article; sale of feeding stuff below grade; forfeiture; authorizing use of adulterants; release from forfeiture.** — Any manufacturer, importer, jobber, agent, or dealer who shall sell, offer or expose for sale or distribution in this State, any concentrated commercial feeding stuff, as defined above in this article, without complying with the requirements of the preceding sections of this article, or who shall sell or offer or expose for sale or distribution any concentrated commercial feeding stuff which contains substantially a smaller percentage of crude protein or crude fat or carbohydrates or a larger percentage of crude fiber than certified to be contained, or who shall adulterate any feeding stuff with foreign, mineral, or other substance or substances, such as rice chaff or hulls, peanut shells, corn cobs, oat hulls, or similar materials of little or no feeding value, or with substances injurious to the health of domestic animals, shall be guilty of a violation of this article, and the lot of feeding stuff in question shall be subject to seizure, condemnation, and sale by the Commissioner of Agriculture, and the proceeds from said sales shall be covered into the State treasury for the use of the Department executing the provisions of this article; provided, however, the Board of Agriculture may authorize and regulate the use of some such substances in feeding stuffs to satisfy certain feeding needs determined by research findings. The Commissioner of Agriculture, however, may in his discretion release the feeding stuff so withdrawn when the requirements of the provisions of this article have been complied with, and upon payment of all costs and expenses incurred by the Department of Agriculture in any proceedings connected with such seizure and withdrawal. (1909, c. 149, s. 7; C. S., s. 4731; 1963, c. 1176.)

Editor's Note. — The 1963 amendment added the proviso at the end of the first sentence.

§ **106-101. Method of seizure and sale on forfeiture.** — Such seizure and sale shall be made under the direction of the Commissioner of Agriculture or an officer of the Department of Agriculture. The sale shall be made at the courthouse door in the county in which the seizure is made, after thirty days' advertisement in some newspaper published in such county, or if no newspaper is published in such county, then by like advertisement published in the nearest county thereto having a newspaper. The advertisement shall state the name or brand of the goods, the quantity, and why seized and offered for sale. (1909, c. 149, s. 7; C. S., s. 4732.)

§ **106-102. Collection and analysis of sample.** — The Commissioner of Agriculture, together with his deputies, agents, and assistants, shall have free access to all places of business, mills, buildings, carriages, cars, vessels, and packages of whatsoever kind used in the manufacture, importation, or sale of any concentrated commercial feeding stuff, and shall have power and authority to open any package containing or supposed to contain any concentrated commercial feeding stuff, and, upon tender and full payment of the selling price of said samples, to take therefrom, in the manner hereinafter prescribed, samples for analysis; and he shall annually cause to be analyzed at least one sample so taken of every concentrated commercial feeding stuff that is found, sold, or offered or exposed for sale in this State under the provisions of this article. Said sample, not less than one pound in weight, shall be taken from not less than ten bags or packages, or if there be less than ten bags or packages, then the sample shall be taken from each bag or package, if it be in bag or package form, or if such feeding stuff be in bulk, then it shall be taken from ten different places of the lot. The sample or samples taken shall be kept a reasonable length of time by the Department of Agriculture, and on demand a portion of such sample or samples shall be furnished to the manufacturer, importer, or jobber of his feeds for examination by the chemists or other experts of said manufacturer, importer, or jobber. The Department of Agriculture is hereby authorized to publish from time to time in reports or bulletins the results of the analysis of such sample or samples, together with such additional information as circumstances advise: Provided, however, that if such sample or samples as analyzed differ from the statement prescribed in § 106-93.1, then, at least thirty days before publishing the results of such analysis, written notice shall be given of such results to the manufacturer, importer, agent, or jobber of such stock, if the name and address of such manufacturer, jobber, or importer be known: Provided further, that if the analysis of any such sample differs within reasonable limits only from the statement (prescribed in § 106-93.1) appearing upon the goods, the manufacturer shall be considered as having complied with the requirements of this article. (Rev., s. 3808; 1909, c. 149, s. 9; C. S., s. 4733; 1943, c. 225, s. 4.)

Cross Reference.—See note to § 106-94.

Applied in State ex rel. Graham v. Nash Johnson & Sons' Farms, 263 N.C. 66, 138 S.E.2d 773 (1964).

§ **106-102.1. Misbranding; penalty; payable to purchaser; value of feed; deficiencies of weight.**—If the analysis shall show that any feed bearing a guaranteed analysis of twenty-four percent protein or less falls as much as five percent (five percent of the guarantee) and not more than ten percent (ten percent of the guarantee) below the guaranteed analysis in protein, twice the value of such deficiency shall be assessed against the manufacturer or guarantor. If the feed shall fall over ten percent below the guaranteed analysis in protein, the penalty assessed shall be three times the value of the deficiency.

If the analysis shall show that any feed bearing a guaranteed analysis of more than twenty-four percent protein falls as much as two percent (two percent of the guarantee) and not more than four percent (four percent of the guarantee) below the guaranteed analysis in protein, twice the value of such deficiency shall be assessed against the manufacturer or guarantor. If the feed shall fall over four percent below the guaranteed analysis in protein, the penalty assessed shall be three times the value of the deficiency. If the analysis shall show that any feed is deficient in fat by more than fifty hundredths percent (one half unit), the Commissioner may, in his discretion, assess a penalty equal to twice the value of the deficiency.

If the fiber content of any lot of feed shall exceed the maximum guarantee by more than two percent (2%) (two units), a penalty shall be assessed equal to ten percent (10%) of the value of the feed; provided, if the fiber content of any lot of dairy or dairy cow feed shall exceed a maximum guarantee of fifteen percent (15%), a penalty shall be assessed equal to ten percent (10%) of the value of the feed.

If the microscopic analysis or any other analysis reveals that the feed is mislabeled, the Commissioner may, in his discretion, assess a penalty equal to ten percent (10%) of the value of the feed.

The minimum penalty under any of the foregoing provisions shall in no case be less than three dollars ($3.00), regardless of the value of the deficiency.

Within sixty days from the date of notice by the Commissioner to the manufacturer, guarantor, dealer, or agent, all penalties assessed and collected under this section shall be paid to the purchaser of the lot of feed represented by the sample analyzed. When such penalties are paid, receipts shall be taken and promptly forwarded to the Commissioner of Agriculture. If said consumers cannot be found, the amount of the penalty assessed shall be paid to the Commissioner of Agriculture who shall deposit the same in the Department of Agriculture fund, of which the State Treasurer is custodian. Such sums as shall thereafter be found to be payable to consumers on lots of feed against which penalties were assessed shall be paid from said fund on order of the Commissioner of Agriculture. After a twelve months' period such sums as have not been paid to consumers on lots of feed against which said penalties were assessed may be used by the Commissioner of Agriculture as he may see fit for the purpose of promoting the agricultural program of the State.

The approximate retail value per pound and per unit of the various guarantees shall be computed by the Commissioner and be used to establish the relative value of the feed sold or offered for sale in this State. The Commissioner is authorized to furnish, upon application, such relative values to any persons engaged in the manufacture or sale of feed in this State.

If any feed is found by an inspector of the Department of Agriculture to be short in weight, the manufacturer or guarantor of said feed shall, within ten days of official notice from the Department of Agriculture, make good such deficiency and pay to the consumer a penalty equal to four times the value of the actual shortage. The Commissioner, in his discretion, may allow reasonable tolerances for short weight due to loss through handling and transporting. (1943, c. 225, s. 5; 1953, c. 698, s. 2; 1955, c. 868, ss. 4, 5.)

Cross Reference.—See note to § 106-94.

Stated in State ex rel. Graham v. Nash Johnson & Sons' Farms, 263 N.C. 66, 138 S.E.2d 773 (1964).

§ 106-103. Rules and standards to enforce article. — The Board of Agriculture is empowered to adopt standards for concentrated commercial feeding stuffs and such rules and regulations as may be necessary for the enforcement of this article, and a violation of such rules and regulations shall be a misdemeanor. (Rev., s. 3808; 1909, c. 149, s. 9; C. S., s. 4734.)

§ 106-104. Sales without permit. — Any manufacturer, importer, jobber, agent, or dealer who shall sell, offer or expose for sale or distribute in this State any concentrated commercial feeding stuff without having applied for and been issued a permit as required by G.S. 106-99.1 shall be guilty of a violation of the provisions of this article. (1909, c. 149, s. 10; C. S., s. 4735; 1959, c. 1057, s. 10.)

§ 106-105. Refusal to comply with article or hindering its enforcement.—Any manufacturer, importer, jobber, agent, or dealer who refuses to comply with the requirements of the provisions of this article, or any manufacturer, importer, jobber, agent, or dealer or person who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent any chemist, inspector, or other authorized agent in the performance of his duty in connection with the provisions of this article, shall be guilty of a violation of such provisions. (1903, c. 325, s. 8; Rev., s. 3827; 1909, c. 149, s. 11; C. S., s. 4736.)

§ 106-106. Violation of article a misdemeanor. — Any manufacturer, importer, jobber, agent or dealer who violates any of the provisions of this article shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, in the discretion of the court. (1909, c. 149, s. 12; C. S., s. 4737; 1943, c. 225, s. 5a.)

Cross Reference.—See note to § 106-94.

§ **106-107. Notice of charges to accused; hearing before Commissioner.**—Whenever the Commissioner of Agriculture becomes cognizant of any violation of the provisions of this article he shall immediately notify in writing the manufacturer, importer, or jobber and dealer, if same be known. Any party so notified shall be given an opportunity to be heard, under such rules and reglations as may be prescribed by the Commissioner and the Board of Agriculture. (1909, c. 149, s. 13; C. S., s. 4738.)

§ **106-108. Commissioner to certify facts to solicitor and furnish analysis.**—If it appears that any of the provisions of this article have been violated the Commissioner of Agriculture shall certify the facts to the solicitor in the district in which such sample was obtained, and furnish that officer with a copy of the results of the analysis or other examinations of such article, duly authenticated by the analyst or other officer making such examination, under the oath of such officer. (1909, c. 149, s. 13; C. S., s. 4739.)

§ **106-109. Solicitor to prosecute violations.**—It shall be the duty of every solicitor to whom the Commissioner of Agriculture shall report any violation of this article to cause proceedings to be prosecuted without delay for the fines and penalties in such cases prescribed. (1909, c. 149, s. 14; C. S., s. 4740.)

§ **106-110. Certificate of analyst as evidence.** — In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (1909, c. 149, s. 13; C. S., s. 4741.)

Article 10.

Mixed Feed Oats.

§ **106-111. Unlawful to sell mixed feed oats unless ground.**—It shall be unlawful for any person, firm, or corporation to sell, or offer or expose for sale or distribution within the State the feeding material known as "mixed feed oats" unless it first be ground. The duty of enforcing this section and carrying out its provisions and requirements shall be vested in the Commissioner of Agriculture. The Department of Agriculture shall adopt such rules and regulations as may be necessary for the efficient enforcement of this section. Every violation of the provisions of this section shall be deemed a misdemeanor and punishable by a fine not to exceed one hundred dollars. (1931, c. 106.)

Article 11.

Stock and Poultry Tonics.

§ **106-112. Application and affidavit for registration.** — Before any condimental, patented, proprietary or trademarked "stock or poultry tonic," "regulator," "conditioner," or "vermicide" or any similar preparation, regardless of the specific name or title under which it is sold, which is represented as containing "tonic," "remedial" or other "medicinal" properties for domestic animals or poultry, either is sold or offered for sale in this State, by sample or otherwise, the manufacturer, importer, dealer, agent, or person who causes it to be sold or offered for sale shall file with the Commissioner of Agriculture an application for registration on a form to be furnished by said Commissioner, the execution of which shall be sworn to before a notary public or other proper official for registration, stating the name of the manufacturer, the location of the principal office of the manufacturer, the name, brand, or trademark under which said preparation or preparations will be sold, and a statement of the ingredients of said preparation, together with a labeled package of said preparation showing claims made for same, which labeling shall not be changed during the year for which the registration is made without consent of the Commissioner of Agriculture. The Commissioner of Agriculture shall decline to register a preparation that is injurious to the health of domestic animals or poultry, or that conflicts with the requirements of the North Carolina Food, Drug and Cosmetic Law, or that the name, trademark, or label under which the preparation is sold may mislead or deceive the purchaser in any way, or that any statements, designs, or devices on the label or package regarding the substances contained therein are not true and correct, or that any claims made for the feeding, condimental, tonic, or medicinal value are false or misleading in any particular. (1909, c. 556, s. 1; C. S., s. 4742; 1943, c. 226, s. 1.)

Note Uncollectible for Noncompliance.—Where a note is given in consideration of the sale of a foodstuff or "conditioner" coming within the provisions of this section, §§ 106-113, 106-114 and 106-119 and the requirements of these sections have not been complied with by the seller, the note is uncollectible against the purchaser or maker. Miller v. Howell, 184 N.C. 119, 113 S.E. 621 (1922).

§ **106-113. Registration fee.** — For the expense incurred in registering, inspecting, and analyzing "stock or poultry tonics," "regulators," "conditioners," "vermicides," and similar preparations defined in § 106-112, a registration fee of twenty dollars for each separate brand shall be paid by the manufacturers or sellers of same to the Commissioner of Agriculture during the month of January in each year, said fees to be used by the Commissioner of Agriculture for executing the provisions of this article. (1909, c. 556, s. 2; C. S., s. 4743; 1943, c. 226, s. 2.)

§ **106-114. Sale of unregistered tonics a misdemeanor.**—Any person, company, corporation, or agent that shall offer for sale or expose for sale any package or sample or any quantity of any condimental, patented, proprietary, or trademarked "stock or poultry tonic," "regulator," "conditioner," "vermicide," or any similar preparation, regardless of the title under which it is sold, which has not been registered as required by § 106-112, or which may have been registered, but subsequently found by an analysis or examination made by or under the direction of the Commissioner of Agriculture to violate any of the provisions of this article, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in the sum of fifty dollars ($50.00) for the first offense and in the sum of one hundred dollars ($100.00) for each subsequent offense. (1909, c. 556, s. 3; C. S., s. 4744; 1943, c. 226, s. 3.)

§ **106-115. Notice of violation charged; hearing before Commissioner.**—Whenever the Commissioner of Agriculture becomes cognizant of any violation of any of the provisions of this article he shall immediately notify, in writing, the manufacturer, importer, jobber, or dealer, if same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the Commissioner and the Board of Agriculture. (1909, c. 556, s. 4; C. S., s. 4745.)

§ **106-116. Issuance of "stop-sale" orders by Commissioner; confiscation or sale of products.**—If it appears that any of the provisions of this article have been violated, the Commissioner of Agriculture or his authorized representative is hereby authorized to issue a "stop-sale" order which shall prohibit further sale of any product offered in violation of this article until the law has been complied with or said violation has otherwise been legally disposed of. The Commissioner of Agriculture or his authorized representative is further authorized to confiscate and seize any products sold or offered for sale in violation of this article and shall have the authority to sell said product if it can be made to conform to this article or to destroy same if it cannot be made to conform with this article. Such sale shall be made at the courthouse door in the county in which the seizure is made, after 30 days' advertisement in some newspaper published in such county, or if no newspaper is published in such county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the name of the product, the quantity, why seized and offered for sale. The proceeds from such sale, after deducting the necessary expense of said sale, shall be deposited with the State Treasurer for the use of the Department of Agriculture. (1909, c. 556, s. 4; C. S., s. 4746; 1941, c. 199, s. 1.)

§ **106-117. Prosecution of violations.**—If any person, firm or corporation shall violate any provision of this article, it shall be the duty of the Commissioner of Agriculture or his authorized representative to cause proceedings to be commenced and prosecuted in a court of competent jurisdiction in the district where the violation occurred. (1909, c. 556, s. 5; C. S., s. 4747; 1941, c. 199, s. 2.)

§ **106-118. Certificate of analyst as evidence.** — In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (1909, c. 556, s. 4; C. S., s. 4748.)

§ **106-119. Purpose of article.**—This article does not repeal any part of any concentrated commercial feeding-stuff law which may be in effect in this State, but is designed to fully cover all preparations commonly known as condimental, patented, proprietary, or trademarked "stock or poultry tonics," "regulators," "conditioners," "vermicides," and all similar preparations used for "tonic," "regulative," or "condition" purposes, and to protect the public from deception and fraud in the sale of these specific products. (1909, c. 556, s. 6; C. S., s. 4749; 1943, c. 226, s. 4.)

Article 12.

Food, Drugs and Cosmetics.

§ **106-120. Title of article.** — This article may be cited as the North Carolina Food, Drug and Cosmetic Act. (1939, c. 320, s. 1.)

Editor's Note. — For comment on this enactment, see 17 N.C.L. Rev. 400.

§ **106-121. Definitions and general consideration.**—For the purpose of this article:

(1) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purposes of inducing, or which are likly to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.

(2) The term "Commissioner" means the Commissioner of Agriculture; the term "Department" means the Department of Agriculture, and the the term "Board" means the Board of Agriculture.

(3) The term "contaminated with filth" applies to any food, drug, device or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(4) The term "cosmetic" means

  a. Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and

b. Articles intended for use as a component of any such articles, except that such terms shall not include soap.

(5) The term "device," except when used in subdivision (15) of this section and in §§ 106-122, subdivision (10), 106-130, subdivision (6), 106-134, subdivision (3) and 106-137, subdivision (3) means instruments, apparatus and contrivances, including their components, parts and accessories, intended

a. For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

b. To affect the structure or any function of the body of man or other animals.

(6) The term "drug" means

a. Articles recognized in the official United States Pharmacopœia, official Homeopathic Pharmacopœia of the United States, or official National Formulary, or any supplement to any of them; and

b. Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and

c. Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

d. Articles intended for use as a component of any article specified in paragraphs a, b or c; but does not include devices or their components, parts, or accessories.

(7) The term "Federal Act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

(8) The term "food" means

a. Articles used for food or drink for man or other animals,

b. Chewing gum, and

c. Articles used for components of any such article.

(9) The term "immediate container" does not include package liners.

(10) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this article that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(11) The term "labeling" means all labels and other written, printed, or graphic matter

a. Upon an article or any of its containers or wrappers, or

b. Accompanying such article.

(12) The term "new drug" means

a. Any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or

b. Any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigation, been used to a material extent or for a material time under such conditions.

(13) The term "official compendium" means the official United States Pharmacopœia, official Homeopathic Pharmacopœia of the United States, official National Formulary, or any supplement to any of them.

(14) The term "person" includes individual, partnership, corporation, and association.

(15) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(16) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(17) The provisions of this article regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article; and the supplying or applying of any such article in the conduct of any food, drug or cosmetic establishment. (1939, c. 320, s. 2.)

§ **106-122. Certain acts prohibited.**—The following acts and the causing thereof within the State of North Carolina are hereby prohibited:

(1) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.

(2) The adulteration or misbranding of any food, drug, device, or cosmetic.

(3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of § 106-131 or 106-135.

(5) The dissemination of any false advertisement.

(6) The refusal to permit entry or inspection, or refusal to permit the taking of a sample, as authorized by § 106-140.

(7) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the State of North Carolina from whom he received in good faith the food, drug, device or cosmetic.

(8) The removal or disposal of a detained or embargoed article in violation of § 106-125.

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded.

(10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of this article.

(11) The using, on the labeling of any drug or in any advertisement relating

to such drug, of any representation or suggestion that an application with respect to such drug is effective under § 106-135, or that such drug complies with the provisions of such section. (1939, c. 320, s. 3.)

This section applies to adulteration of foods kept for sale. It has no application, therefore, to a controversy involving certain preservation powders for fruits. Smith v. Alphin, 150 N.C. 425, 64 S.E. 210 (1909).

§ **106-123. Injunctions restraining violations.**—In addition to the remedies hereinafter provided, the Commissioner of Agriculture is hereby authorized to apply to the superior court for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of § 106-122; irrespective of whether or not there exists an adequate remedy at law. (1939, c. 320, s. 4.)

§ **106-124. Violations made misdemeanor.**—(a) Any person who violates any of the provisions of § 106-122 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment in the county jail for not more than six months or a fine of not more than two hundred dollars, or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment in the county jail for not more than twelve months, or a fine of not more than four hundred dollars, or both such imprisonment and fine.

(b) No person shall be subject to the penalties of subsection (a) of this section, for having violated § 106-122, subdivision (1) or (3) if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the State of North Carolina from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this article, designating this article.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused on the request of the Commissioner of Agriculture to furnish the Commissioner the name and post-office address of the manufacturer, packer, distributor, seller or advertising agency, residing in the State of North Carolina who caused him to disseminate such advertisement. (1939, c. 320, s. 5.)

Civil Liability. — Impure and dangerous articles of food, causing death of purchaser, subject the seller to liability in a civil action for damages. Ward v. Sea Food Co., 171 N.C. 33, 87 S.E. 958 (1916).

§ **106-125. Detention of product or article suspected of being adulterated or misbranded.**—(a) Whenever a duly authorized agent of the Department of Agriculture finds or has probable cause to believe, that any food, drug, device or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent within the meaning of this article, he shall affix to such article a tag or other appropriate marking giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(b) When an article detained or embargoed under subsection (a) has been found by such agent to be adulterated, or misbranded, he shall petition the judge of any recorder's, county, or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent; and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent: Provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labelled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the Department of Agriculture. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the Department of Agriculture that the article is no longer in violation of this article, and that the expenses of such supervision have been paid.

(d) Whenever any duly authorized agent of the Department of Agriculture shall find in any room, building, vehicle of transportation or other structure, any meat, sea food, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the agent shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food. (1939, c. 320, s. 6.)

§ **106-126. Prosecutions of violations.** — It shall be the duty of any solicitor of a recorder's, county, or superior court to whom the Commissioner of Agriculture reports any violation of this article, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of this article is reported to any such solicitor for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the Commissioner of Agriculture or his designated agent, either orally or in writing, in person or by attorney, with regard to such contemplated proceeding. (1939, c. 320, s. 7.)

§ **106-127. Report of minor violations in discretion of Commissioner.**—Nothing in this article shall be construed as requiring the Commissioner of Agriculture to report for the institution of proceedings under this article, minor violations of this article, whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. (1939, c. 320, s. 8.)

§ **106-128. Establishment of reasonable standards of quality by Board of Agriculture.**—Whenever in the judgment of the Board of Agriculture such action will promote honesty and fair dealing in the interest of consumers, the Board shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the Board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated by the Secretary of the United States Department of Agriculture under authority conferred by section four hundred one (401) of the Federal Act. (1939, c. 320, s. 9.)

§ **106-129. Foods deemed to be adulterated.**—A food shall be deemed to be adulterated:

(1) a. If it bears or contains any poisonous or deleterious substance

which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this paragraph if the quantity of such substance in such food does not ordinarily render it injurious to health; or

b. If it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of § 106-132; or

c. If it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for food; or

d. If it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health; or

e. If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or

f. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(2) a. If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or

b. If any substance has been substituted wholly or in part therefor; or

c. If damage or inferiority has been concealed in any manner; or

d. If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

(3) If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four tenths of one per centum, harmless natural gum, and pectin: Provided, that this subdivision shall not apply to any confectionery by reason of its containing less than one half of one per centum by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

(4) If it bears or contains a coal-tar color other than one from a batch which has been certified by the United States Department of Agriculture. (1939, c. 320, s. 10.)

§ **106-130. Foods deemed misbranded.**—A food shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If it is offered for sale under the name of another food.

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated.

(4) If its container is so made, formed or filled as to be misleading.

(5) If in package form, unless it bears a label containing

a. The name and place of business of the manufacturer, packer, or distributor; and

b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count:

Provided, that under paragraph b of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board of Agriculture.

(6) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(7) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by § 106-128, unless

a. It conforms to such definition and standard, and

b. Its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

(8) If it purports to be or is represented as

a. A food for which a standard of quality has been prescribed by regulations as provided by § 106-128 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

b. A food for which a standard or standards of fill of container have been prescribed by regulation as provided by § 106-128, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(9) If it is not subject to the provisions of subdivision (7) of this section, unless its label bears

a. The common or usual name of the food, if any there be, and

b. In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each:

Provided, that, to the extent that compliance with the requirements of paragraph b of this subdivision is impracticable or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the Board of Agriculture.

(10) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the Board of Agriculture determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses.

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears a label stating that fact: Provided, that to the extent that compliance with the requirements of this subdivision is impracticable, exemptions shall be established by regulations promulgated by the Board of Agriculture: Provided, further, that for the purpose of complying with the provisions of this article, as it pertains to bottled soft drinks, either the bottle crown or the crown together with the blown-in-the-bottle or annealed-to-the-bottle statements, now in usual and common use in this State, shall be deemed sufficient labeling and no paper label shall be necessary. (1939, c. 320, s. 11.)

§ 106-131. Permits governing manufacture of foods subject to contamination with microorganisms. — (a) Whenever the Commissioner of Agriculture finds after investigation by himself or his duly authorized agents, that the distribution in North Carolina of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality in this State, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce, the Commissioner, then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the Commissioner as provided by such regulations.

(b) The Commissioner of Agriculture is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Commissioner shall immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(c) Any officer or employee duly designated by the Commissioner of Agriculture shall have access to any factory or establishment, the operator of which holds a permit from the Commissioner of Agriculture for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator. (1939, c. 320, s. 12.)

§ 106-132. Regulations by Board of Agriculture as to use of deleterious substances.—Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of paragraph b of subdivision (1) of § 106-129; but when such substance is so required or cannot be so avoided, the Board of Agriculture shall promulgate regulations limiting the quantity therein or thereon to such extent as the Board finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for the purposes of the application of paragraph b of subdivision (1) of § 106-129. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of paragraph a, subdivision (1), § 106-129. In determining the quantity of such added substance to be tolerated in or on different articles of food, the Board shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. (1939, c. 320, s. 13.)

§ 106-133. Drugs deemed to be adulterated.—A drug or device shall be deemed to be adulterated:

(1) a. If it consists in whole or in part of any filthy, putrid or decomposed substance; or

b. If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or

c. If it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

d. If it is a drug and it bears or contains, for purposes of coloring only, a coal-tar color other than one from a batch certified by the United States Department of Agriculture.

(2) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those so prescribed by the United States Department of Agriculture. No drug defined in an official compendium shall be deemed to be adulterated under this subdivision because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(3) If it is not subject to the provisions of subdivision (2) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

(4) If it is a drug and any substance has been

a. Mixed or packed therewith so as to reduce its quality or strength; or

b. Substituted wholly or in part therefor. (1939, c. 320, s. 14.)

§ **106-134. Drugs deemed misbranded.** — A drug or device shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If in package form unless it bears a label containing

a. The name and place of business of the manufacturer, packer, or distributor; and

b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, that under paragraph b of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board of Agriculture.

(3) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alphaeucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulphonmethane; or any chemical derivative of such substances, which derivative has been by

the Board after investigation, found to be, and by regulations under this article, designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

(5) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears

a. The common or usual name of the drug, if such there be; and

b. In case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: Provided, that to the extent that compliance with the requirements of paragraph b of this subdivision is impracticable, exemptions shall be established by regulations promulgated by the Board of Agriculture.

(6) Unless its labeling bears

a. Adequate directions for use; and

b. Such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: Provided, that where any requirement of paragraph a of this subdivision, as applied to any drug or device, is not necessary for the protection of the public health, the Board of Agriculture shall promulgate regulations exempting such drug or device from such requirements.

(7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: Provided, that the method of packing may be modified with the consent of the Board of Agriculture. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.

(8) If it has been found by the Department of Agriculture to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the Board of Agriculture shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the Commissioner of Agriculture shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(9) a. If it is a drug and its container is so made, formed, or filled as to be misleading; or

b. If it is an imitation of another drug; or

c. If it is offered for sale under the name of another drug.

(10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

(11) If

a. It is a drug sold at retail and contains any quantity of amidopyrine, barbituric acid, cinchophen, dinitrophenol, sulfanilamide, pituitary, thyroid, or their derivatives, or

b. It is a drug or device sold at retail and its label bears a statement that it is to be dispensed or sold only by or on the prescription of a physician, dentist or veterinarian; unless it is sold on a written prescription signed by a member of the medical, dental, or veterinary profession who is licensed by law to administer such drug or device, and its label bears the name and place of business of the seller, the serial number and date of such prescription, and the name of such member of the medical, dental or veterinary profession. Such prescription shall not be refilled except on the specific authorization of the prescribing physician, dentist or veterinarian.

Nothing in this subdivision shall apply to a compound, mixture, or preparation containing salts or derivatives of barbituric acid which is sold in good faith for the purpose for which it is intended and not for the purpose of evading the provisions of this subdivision if:

a. Such compound, mixture, or preparation contains a sufficient quantity of another drug or drugs, in addition to such salts or derivatives, to cause it to produce an action other than its hypnotic or somnifacient action; or

b. Such compound, mixture, or preparation is intended for use as a spray or gargle or for external application and contains, in addition to such salts or derivatives, some other drug or drugs rendering it unfit for internal administration.

(12) A drug sold on a written prescription signed by a member of the medical, dental or veterinary profession (except a drug sold in the course of the conduct of a business of selling drugs pursuant to a diagnosis by mail) shall be exempt from the requirements of this section if—

a. Such member of the medical, dental or veterinary profession is licensed by law to administer such drug, and

b. Such drug bears a label containing the name and place of business of the seller, the serial number and date of such prescription, and the name of such member of the medical, dental or veterinary profession. (1939, c. 320, s. 15; 1949, c. 370.)

§ **106-135. Regulations for sale of new drugs.**—(a) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless

(1) An application with respect thereto has become effective under section five hundred and five of the Federal Act, or

(2) When not subject to the Federal Act unless such drug has been tested and has not been found to be unsafe for use under the conditions prescribed, recommended or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the Commissioner of Agriculture an application setting forth

a. Full reports of investigations which have been made to show whether or not such drug is safe for use;

b. A full list of the articles used as components of such drug;

c. A full statement of the composition of such drug;

d. A full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug;

e. Such samples of such drug and of the articles used as components thereof as the Commissioner may require; and

f. Specimens of the labeling proposed to be used for such drug.

(b) An application provided for in subsection (a) (2) of this section shall become effective on the sixtieth day after the filing thereof, except that if the Commissioner of Agriculture finds after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe for use under the conditions prescribed, recommended or suggested in the proposed labeling thereof, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(c) This section shall not apply—

(1) To a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs provided the drug is plainly labeled "For investigational use only"; or

(2) To a drug sold in this State at any time prior to the enactment of this article or introduced into interstate commerce at any time prior to the enactment of the Federal Act; or

(3) To any drug which is licensed under the Virus, Serum, and Toxin Act of July first, one thousand nine hundred and two (U.S.C., 1934 ed., Title 42, chapter 4).

(d) A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail), shall be exempt from the requirements of this section if

(1) Such physician, dentist, or veterinarian is licensed by law to administer such drug, and

(2) Such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian.

(e) An order refusing to permit an application under this section to become effective may be revoked by the Commissioner of Agriculture. (1939, c. 320, s. 16.)

Editor's Note.—For the Federal Food, Drug and Cosmetic Act, see 21 U.S.C. § 301 et seq.

§ **106-136. Cosmetics deemed adulterated.**—A cosmetic shall be deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual: Provided, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this subdivision and subdivision (5) the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

(2) If it consists in whole or in part of any filthy, putrid, or decomposed substance.

(3) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(4) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(5) If it is not a hair dye and it bears or contains a coal-tar color other than one from a batch which has been certified by the United States Department of Agriculture. (1939, c. 320, s. 17.)

Cited in Hanrahan v. Walgreen Co., 243 N.C. 268, 90 S.E.2d 392 (1955).

§ **106-137. Cosmetics deemed misbranded.**—A cosmetic shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If in package form unless it bears a label containing

  a. The name and place of business of the manufacturer, packer, or distributor; and

  b. An accurate statement of the quantity, of the contents in terms of weight, measure, or numerical count: Provided, that under paragraph b of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the Board of Agriculture.

(3) If any word, statement, or other information required by or under authority of this article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) If its container is so made, formed, or filled as to be misleading. (1939, c. 320, s. 18.)

Cited in Hanrahan v. Walgreen Co., 243 N.C. 268, 90 S.E.2d 392 (1955).

§ **106-138. False advertising.**—(a) An advertisement of a food, drug, device or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) For the purpose of this article the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diptheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis, media, paralysis, pneumonia, poliomyelitis, (infantile paralysis), prostrate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal diseases, shall also be deemed to be false; except that no advertisement not in violation of subsection (a) shall be deemed to be false under this subsection if it is disseminated only to members of the medical, dental, pharmaceutical, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: Provided, that whenever the Department of Agriculture determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the Board shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the Board may deem necessary in the interest of public health: Provided, that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious. (1939, c. 320, s. 19.)

Cited in Hanrahan v. Walgreen Co., 243 N.C. 268, 90 S.E.2d 392 (1955).

§ 106-139. Regulations by Board of Agriculture.—(a) The authority to promulgate regulations for the efficient enforcement of this article is hereby vested in the Board of Agriculture, except that the Commissioner of Agriculture is hereby authorized to promulgate regulations under § 106-131. The Board is hereby authorized to make the regulations promulgated under this article conform, insofar as practicable with those promulgated under the Federal Act.

(b) Hearings authorized or required by this article shall be conducted by the Commissioner of Agriculture or such officer, agent, or employee as the Commissioner may designate for the purpose.

(c) A representative duly designated by the North Carolina Board of Pharmacy, and a representative duly designated by the North Carolina Board of Health shall sit with the Commissioner of Agriculture, or his duly authorized agent, and assist in all hearings conducted in accordance with the provisions of § 106-134, subdivisions (4), (6), (7), and (8); and in all cases of hearings and/or investigations, under § 106-134, subdivisions (4), (6), (7), and (8) and under § 106-135, subsections (a), (b), and (d), transcripts of all findings and recommendations shall be submitted to the Board of Pharmacy and the Board of Health for approval.

(d) Before promulgating any regulation contemplated by §§ 106-128; 106-130, subdivision (10); 106-131; 106-134, subdivisions (4), (6), (7), and (8), or 106-138, subsection (b), the Commissioner of Agriculture shall give appropriate notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the Board of Agriculture (which date shall not be prior to ninety days after its promulgation, except such regulations as may be promulgated under § 106-131, which regulations shall become effective on the date of promulgation). Such regulation may be amended or repealed in the same manner as is provided for its adoption; except that in the case of a regulation amending or repealing any such regulation the Board, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.

(e) All proposed definitions and standards for drugs shall, prior to promulgation by the Board of Agriculture be submitted to the Board of Pharmacy and the Board of Health for approval. (1939, c. 320, s. 20.)

§ 106-140. Further powers of Commissioner of Agriculture for enforcement of article.—The Commissioner of Agriculture or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or are held after such introduction, or to enter any vehicle being used to transport or hold such foods, drugs, devices or cosmetics in commerce, for the purpose:

(1) Of inspecting such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein, to determine if any of the provisions of this article are being violated, and

(2) To secure samples or specimens of any food, drug, device or cosmetic after paying or offering to pay for such sample. It shall be the duty of the Commissioner of Agriculture to make or cause to be made examination of samples secured under the provisions of this section to determine whether or not any provision of this article is being violated. (1939, c. 320, s. 21.)

§ **106-141. Appointment of inspectors.**—(a) In the appointment of any drug inspector in carrying out the provisions of this article, the Commissioner of Agriculture shall confer with the North Carolina Board of Pharmacy.

(b) The Commissioner of Agriculture is authorized to conduct the examinations and investigations for the purposes of this article through officers and employees of the Department or through any health, food or drug officer or employee of the State, or any political subdivision thereof: Provided, that when examinations and investigations are to be conducted through any officer or employee of any agency other than the Department of Agriculture the arrangements for such examinations and investigations shall be approved by the directing head of such agency. (1939, c. 320, s. 22.)

§ **106-142. Publication of reports of judgments, decrees, etc.**—(a) The Commissioner of Agriculture may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this article, including the nature of the charge and the disposition thereof.

(b) The Commissioner of Agriculture may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as he deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the Commissioner of Agriculture from collecting, reporting, and illustrating the results of the investigations of the Department. (1939, c. 320, s. 23.)

§ **106-143. Article construed supplementary.**—Nothing in this article shall be construed as in any way amending, abridging, or otherwise affecting the validity of any law or ordinance relating to the State Board of Health, or any local health department, in their sanitary work in connection with public and private water supplies, sewerage, meat, milk, milk products, shellfish, fin fish, or other foods, or food products, or the production, handling, or processing thereof; but this article shall be construed to be in addition thereto. (1939, c. 320, s. 24½.)

§ **106-144. Exemptions.**— Meats and meat products subject to Federal Meat and Inspection Act approved March four, one thousand nine hundred and seven, as amended, are exempted from the provisions of this article so long as such meats and meat products remain in possession of the processor. (1939, c. 320, s. 24⅔.)

§ **106-145. Effective date.**—This article shall be in full force and effect from and after January first, one thousand nine hundred and forty: Provided, that the provisions of § 106-139 shall become effective on April 3, 1939 and thereafter the Commissioner of Agriculture is authorized hereby to conduct hearings, and the Board is authorized to promulgate regulations which shall become effective on and after the effective date of this article as the Board shall direct. (1939, c. 320, s. 25.)

Article 13.

Canned Dog Foods.

§ **106-146. Labeling of canned dog food required.** — Every can of dog food sold, offered or exposed for sale within this State shall have printed thereon, in a conspicuous place on the outside thereof, a legible and plainly printed statement in the English language clearly and truly certifying the net weight of the can; the name, brand or trademark under which the article is sold; the name and address of the manufacturer; the name of each and all ingredients of which the article is composed; a guarantee that the contents are wholesome and unadulterated, and a statement of the maximum percentage it contains of crude fiber, and the percentage of crude fat, and the percentage of crude protein. (1939, c. 307, s. 1; 1941, c. 290, s. 1; 1955, c. 267, s. 1.)

Editor's Note. — For comment on the 1939 amendment, see 17 N.C.L. Rev. 329.

§ **106-147. "Canned dog food" defined.**—The term "canned dog food" shall be held to include any article of food, packed in cans or hermetically sealed containers, and used for food for dogs or cats. (1939, c. 307, s. 2.)

§ **106-148. Registration of copies of labels with Commissioner of Agriculture.**—Each and every manufacturer, importer, jobber, agent or seller, before selling, offering or exposing for sale in this State any canned dog food, shall, for each and every canned dog food bearing a distinguishing name or trademark, file for registration with the Commissioner of Agriculture a copy of the statement required in § 106-146, giving in addition the percentage of moisture contained in said products, and accompany said statement, upon request, by a sealed can containing at least one pound of said dog food. (1939, c. 307, s. 3; 1941, c. 290, s. 2.)

§ **106-149. Power of Commissioner of Agriculture to refuse or revoke registration upon failure to comply with regulations.**—The Commissioner of Agriculture shall have the power to refuse the registration of any canned dog food under a name which would be misleading as to the materials of which it is composed, or when the names of each and all ingredients of which it is composed are not stated, or where it does not comply with the standards and rulings adopted by the Board of Agriculture. Should any canned dog foods be registered and it is afterwards discovered that they are in violation of any of the provisions of this article, the Commissioner of Agriculture shall have the power to cancel such registration. (1939, c. 307, s. 4.)

§ **106-150. Annual registration fee; inspection tax; stamps; reporting system.**—Upon registration of each brand or kind of dog food, the manufacturer, agent or distributor thereof shall pay to the Commissioner of Agriculture an annual registration fee of five dollars ($5.00) payable at the time of registration, and thereafter on or before the last day of December of each year. Furthermore, each such manufacturer, agent or distributor shall pay to the Commissioner of Agriculture an inspection tax at the rate of two cents for each carton of forty-eight cans and shall affix to each such carton a stamp to be furnished by the Commissioner of Agriculture stating that all charges specified in this section have been paid. Said stamps shall be redeemed by the Department issuing said stamps, upon surrender of same, accompanied by an affidavit that the same have not been used: Provided, said stamps shall be returned for redemption within the time fixed by the Board of Agriculture.

Any manufacturer, importer, jobber, firm, corporation or person who distributes canned dog food in this State may make application for a permit to report the quantity of canned dog food sold and pay the inspection tax at the rate of two (2) cents for each carton of forty-eight cans as hereinbefore mentioned, as the basis of said report, in lieu of affixing inspection stamps. The Commissioner of Agriculture may, in his discretion, grant such permit. The issuance of all permits will be conditioned on the applicant's satisfying the Commissioner that he has a good bookkeeping system and keeps such records as may be necessary to indicate accurately the quantity of canned dog food sold in the State and as are satisfactory to the Commissioner of Agriculture, and granting the Commissioner, or his duly authorized representative, permission to examine such records and verify the statement. The report shall be quarterly and the inspection fee shall be due and payable quarterly, on or before the tenth day of January, April, July, and October of each year, covering the quantity of canned dog food sold during the preceding quarter. The report shall be under oath and on forms furnished by the Commissioner. If the report is not filed and the inspection fee paid by the tenth day following the date due or if the report be false, the Commissioner may revoke the permit, and if the inspection fee be unpaid after a fifteen day grace period, the amount shall bear a penalty of ten percent which shall be added to the inspection fee due and shall constitute a debt and become the basis of judgment against the securities or bonds which may be required. In order to guarantee faithful performance with the provisions of this paragraph each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with the Commissioner cash in the amount of two hundred fifty dollars ($250) or securities acceptable to the Commissioner of a value of at least two hundred fifty dollars ($250) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The Commissioner shall approve all such securities and bonds before acceptance. (1939, c. 307, s. 5; 1949, c. 1058, ss. 1, 2.)

§ 106-151. Samples for analysis. — The Commissioner of Agriculture, together with his deputies, agents and assistants, shall have free access to all places of business, mills, buildings, carriages, cars, vessels and packages of whatsoever kind used in the manufacture, importation or sale of any canned dog food, and shall have power and authority to open any package containing or supposed to contain any canned dog food, and to take therefrom, in the manner hereinafter prescribed, samples for analysis, upon tender and full payment of the selling price of said sample. The Department of Agriculture is hereby authorized to publish from time to time in reports or bulletins the results of the analysis of such samples. (1939, c. 307, s. 6.)

§ 106-152. Adoption of standards, etc.—The Board of Agriculture is empowered to adopt standards for canned dog foods and such rules and regulations as may be necessary for the enforcement of this article, and to prescribe methods of analysis, which methods shall conform to sound laboratory practices as evidenced by methods prescribed by the Association of Official Agricultural Chemists of the United States. (1939, c. 307, s. 7; 1955, c. 267, s. 2.)

§ 106-153. Confiscation and sale by Commissioner of Agriculture in event of violation.—Any manufacturer, importer, jobber, agent or dealer who shall sell, offer or expose for sale or distribution in this State any canned dog food, as defined in § 106-147, without complying with the requirements of the preceding sections of this article, or who shall sell or offer or expose for sale or distribution any canned dog food which contains substantially a smaller percentage of crude protein or crude fat or a larger percentage of crude fiber or moisture than certified to be contained, or who shall adulterate any canned dog food with foreign substances, of little or no food value, or with injurious substances, shall be guilty of a violation of this article, and the lot of canned dog food in question shall be subject to seizure, condemnation and sale by the Commissioner of Agriculture, and the proceeds from said sales shall be covered into the State treasury for the use of the department executing the provisions of this article. Such seizure and sale shall be made under the direction of the Commissioner of Agriculture by an officer of the Department of Agriculture. The sale shall be made at the courthouse door in the county in which the seizure is made, after advertisement in some newspaper published or circulating in such county. The advertisement shall state the brand or name of the goods, the quantity and why seized and offered for sale. The Commissioner of Agriculture, however, may in his discretion release the canned dog food so withdrawn when the requirements of the provisions of this article have been complied with, and upon payment of all costs and expenses incurred by the Department of Agriculture in any proceedings connected with such seizure and withdrawal. (1939, c. 307, s. 8.)

§ 106-154. Failure to use tax stamps or improper use of stamps.—Any manufacturer, importer, jobber, agent or dealer who shall sell, offer or expose for sale or distribute in this State any canned dog food without having attached thereto or furnished therewith tax stamps, as required by the provisions of this article, or who shall use the required tax stamps a second time to avoid the payment of the tax, or any manufacturer, importer, jobber, agent or dealer who shall counterfeit or use a counterfeit of such tax stamps, shall be guilty of a violation of the provisions of this article. (1939, c. 307, s. 9.)

§ 106-155. Failure to comply with requirements.—Any manufacturer, importer, jobber, agent or dealer who refuses to comply with the requirements of the provisions of this article, or any manufacturer, importer, jobber, agent or dealer or person who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent any chemist, inspector or other authorized agent in the performance of his duty in connection with the provisions of this article, shall be guilty of a violation of the provisions of this article. (1939, c. 307, s. 10.)

§ 106-156. Violations made misdemeanor.—Any manufacturer, importer, jobber, agent or dealer who shall violate any of the provisions of this article, or the rules and regulations issued thereunder, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding one hundred dollars for the first offense, nor more than two hundred dollars for each subsequent offense. (1939, c. 307, s. 11; 1955, c. 267, s. 3.)

§ 106-157. Notification by Commissioner as to violations.—Whenever the Commissioner of Agriculture becomes cognizant of any violation of the provisions of this article he shall immediately notify in writing the manufacturer, importer or jobber and dealer, if same be known. Any party so notified shall be given an opportunity to be heard, under such rules and regulations as may be prescribed by the Commissioner and the Board of Agriculture, and if it appears that any of the provisions of this article have been violated the Commissioner of Agriculture shall certify the facts to the solicitor of the district in which such sample was obtained, and furnish that officer with a copy of the results of the analysis or other examinations of such article, duly authenticated by the analyst or other officer making such examination, under the oath of such officer. In all prosecutions arising under this article the certificate of the analyst or other officer making the analysis or examination, when duly sworn to by such officer, shall be prima facie evidence of the fact or facts therein certified. (1939, c. 307, s. 12.)

§ 106-158. Prosecution of violations. — It shall be the duty of every solicitor to whom the Commissioner of Agriculture shall report any violation of this article to cause proceedings to be commenced and prosecuted without delay for the fines and penalties in such cases prescribed: Provided, that the provisions of this article shall not apply to any canned dog foods now in the hands or in the stock of any dealer or manufacturer. (1939, c. 307, s. 13.)

Article 14.

State Inspection of Slaughterhouses.

§ 106-159. Application for permit.—Any persons, firms or corporations engaged in the slaughter of meat-producing animals within the State of North Carolina, may make application to the Commissioner of Agriculture for a permit to transport, convey, and sell their products at any place within the limits of the State of North Carolina. (1925, c. 181, s. 1.)

§ 106-160. Investigation of sanitary conditions; issuance of permit.—It shall be the duty of the Commissioner of Agriculture, on receipt of such application described above, to cause to be made a thorough investigation of the sanitary conditions existing in such establishment, the efficiency of the inspection provided, and the manner in which the food products of such establishment are slaughtered and prepared. If such establishment is found to be operating in accordance with the regulations of the Commissioner of Agriculture as provided for in this article, a numbered permit shall be issued to the persons, firms, or corporations making application for same. (1925, c. 181, s. 2.)

§ **106-161. Municipalities, inspection of meats.**—Municipal corporations shall have power and authority under this article to establish and maintain the inspection of meats and meat products, at establishments located within their corporate limits, and county commissioners shall have power and authority to establish and maintain inspection of meats and meat products at establisments not located in municipal corporations, but located within the boundaries of their county. (1925, c. 181, s. 3.)

Local Modification.—Rowan and city of Salisbury: 1953, c. 594, s. 1.

§ **106-162. Fees for inspection.**—The officials of municipalities or counties in which such inspection is maintained, shall have full power and authority to fix and collect fees for inspection of any and all meat animals or meat products necessary to the maintenance of such inspection, but no further inspection charge shall be made within the State. (1925, c. 181, s. 4.)

§ **106-163. Inspection conducted by veterinarian.**—No permit shall be issued to any establishment except where the meat inspection is conducted under the supervision of a graduate veterinarian approved by the State Veterinarian of North Carolina or the North Carolina Veterinary Medical Examining Board. (1925, c. 181, s. 5.)

§ **106-164. Number of permit to identify meats; revocation of permit.**—To each establishment complying with the provisions of this article, the numbered permit shall be the establishment's official State number, and such number may be used to identify all passed meats and meat products prepared in such establishment. Such permit may be revoked by the Commissioner of Agriculture at any time when the establishment issued such permit violates any of the regulations prescribed for efficient inspection and sanitation. (1925, c. 181, s. 6.)

§ **106-165. Carcasses marked when inspected.** — All meat carcasses inspected and passed in accordance with this article shall be branded with a rubber stamp bearing the number of the establishment and the words "N.C. Inspected and Passed." (1925, c. 181, s. 7.)

§ **106-166. Rules and regulations for inspection; power of Commissioner.**—The Commissioner of Agriculture shall have full power and authority to make and adopt all necessary rules and regulations for the efficient inspection, preparation and handling of meats and meat products in such establishments, and for the disposal of all condemned meats, and such rules and regulations shall govern the inspection of all meats and meat products at establishments operating under this article. (1925, c. 181, s. 8.)

§ **106-167. Failure of butchers to keep record misdemeanor.**—If any butcher shall fail to keep a book of registration and register the ear-mark, brand, or flesh-mark of all cattle, sheep, swine, or goats, and the name of the parties purchased from, in said registration, and the date of said purchase, which registration shall be open to the inspection of all persons, he shall be guilty of a misdemeanor, and upon conviction shall pay a fine of fifty dollars for each offense: Provided, this shall apply only to the counties of Bertie, Chowan, Craven, Edgecombe, Franklin, Gates, Halifax, Harnett, Johnston, Jones, Martin, Northampton, Orange, Pitt, Richmond, Rockingham, Warren, Wayne and Wilson, and Warsaw township in Duplin County. (1889, c. 318; 1891, cc. 38, 557; 1893, c. 116; 1895, c. 363; 1903, c. 82; 1905, c. 31; Rev., s. 3803; 1909, c. 865, s. 1; C. S., s. 5099.)

§ **106-168. Local: Sales of calves for veal.**—It shall be unlawful for any person or persons, firm, or corporation to buy or sell, or engage in the business of buying and selling or shipping calves for veal under the age of six months, either dead or alive: Provided, that this section shall not apply to persons buying or selling heifer calves to be raised for milk cows, nor to bull calves for raising purposes or work stock.

Any person, firm, or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall pay a penalty of not less than fifteen dollars nor more than thirty dollars, or be imprisoned for not less than twenty nor more than thirty days, or both, in the discretion of the court, for each and every offense.

This section shall apply to the following counties only: Alamance, Alexander Ashe, Cherokee, Clay, Franklin, Gaston, Lee, McDowell, Madison, Mitchell, Robeson, Rutherford, Sampson, Wake and Wilson. (Ex. Sess. 1913, c. 80; 1915, c. 2; 1917, c. 93; Pub. Loc. 1917, cc. 299, 470; 1921, c. 85; 1925, c. 11; Pub. Loc. 1927, c. 143.)

Local Modification. — Alamance: Pub. Loc. 1913, c. 616; Pub. Loc. 1917, c. 391; Alexander: Pub. Loc. 1917, c. 180; Alleghany: Pub. Loc. 1927, c. 473; Anson: Pub. Loc. 1927, c. 422; Avery: Pub. Loc. 1927, c. 143; Durham: 1915, c. 155; Haywood, Macon, Swain, Graham and Jackson: Pub. Loc. 1927, c. 472; Lincoln: Pub. Loc. 1919, c. 159; Watauga: Pub. Loc. 1927, c. 473; Wilkes: Pub. Loc. 1913, c. 731; Ex. Sess. 1921, c. 12.

Article 14A.

Licensing and Regulation of Rendering Plants and Rendering Operations.

§ **106-168.1. Definitions.** — For the purposes of this article, unless the context or subject matter otherwise clearly requires,

(1) "Collector" means any person, as defined in this section, who collects raw material for the purpose of selling the same to any renderer for further processing.

(2) "Person" means any individual, partnership, firm, association or corporation.

(3) "Raw material" means inedible whole or portion of animal or poultry carcasses.

(4) "Rendering operation" means the processing of inedible whole or portion of animal or poultry carcasses and includes collection of such raw material for the purpose of processing.

(5) "Rendering plant" means the building or buildings in which raw material is processed and the premises upon which said building or buildings used in connection with such processing are located. (1953, c. 732.)

§ **106-168.2. License required.**—No person shall engage in rendering operations unless such person shall hold a valid license to do so issued as hereinafter provided. (1953, c. 732.)

§ **106-168.3. Exemptions.**—Nothing in this article shall apply to the premises or the rendering operations on the premises of any establishment operating under a numbered permit from the North Carolina Department of Agriculture as provided by the North Carolina Meat Inspection Act, or under United States government inspection. (1953, c. 732.)

§ **106-168.4. Application for license.**—Application for license shall be made to the Commissioner of Agriculture, hereinafter called the "Commissioner," on forms provided by him. The application shall set forth the name and residence of the applicant, his present or proposed place of business, the particular method which he intends to employ or employs in the processing of raw material, and such other information as the Commissioner may require, except that the Commissioner shall not require the submission of blueprints, plans, or specifications of the existing plant or equipment of any person owning and operating a rendering plant in North Carolina on January 1, 1953. The applicant shall pay a fee of $50.00 with each application, which said fee shall be the only charge made in connection with licensure. (1953, c. 732.)

§ **106-168.5. Duties of Commissioner upon receipt of application; inspection committee.**—Upon receipt of the application, the Commissioner shall promptly cause the rendering plant and equipment, or the plans, specifications, and selected site, of the applicant to be inspected by an inspection committee hereinafter called the "committee," which shall be composed of three members: One member who shall be designated by the Commissioner of Agriculture and who shall be an employee of the Department of Agriculture, one member who shall be designated by the State Health Director and who shall be an employee of the State Board of Health, and one member who shall be designated by the Director of the North Carolina Division of the Southeastern Renderers Association, and who shall be a person having practical knowledge of rendering operations. Each member may be designated and relieved from time to time at the discretion of the designating authority. No State employee designated as a member of the committee shall receive any additional compensation therefor and no compensation shall be paid by the State to any other member. (1953, c. 732; 1957, c. 1357, s. 13.)

§ **106-168.6. Inspection by committee; certificate of specific findings.** — The Committee upon notification by the Commissioner shall promptly inspect the plans, specifications, and selected site in the case of proposed rendering plants and shall inspect the buildings, grounds, and equipment of established rendering plants. If the committee finds that the plans, specifications, and selected site in the case of proposed plants, or the buildings, grounds, and equipment in the case of established plants, comply with the requirements of this article and the rules and regulations promulgated by the Commissioner not inconsistent therewith, it shall certify its findings in writing and forward same to the Commissioner. If there is a failure in any respect to meet such requirements, the committee shall notify the applicant in writing of such deficiencies and the committee shall within a reasonable time to be determined by the Commissioner make a second inspection. If the specified defects are remedied, the committee shall thereupon certify its findings in writing to the Commissioner. Not more than two inspections shall be required of the committee under any one application. (1953, c. 732.)

§ **106-168.7. Issuance of license.**—Upon receipt of the certificate of compliance from the committee, the Commissioner shall issue a license to the applicant to conduct rendering operations as specified in the application. A license shall be valid until revoked for cause as hereinafter provided. (1953, c. 732.)

§ **106-168.8. Minimum standards for conducting rendering operations.**—The following minimum standards shall be required for all rendering operations subject to the provisions of this article:

(1) Buildings utilized in connection with the rendering plant shall be of sufficient size and shape to accommodate all phases of actual or intended processing. Adequate partitions shall be installed therein so as to eliminate any contact between raw materials and finished prod-

ucts and so as to preclude contamination of finished products. The buildings shall be constructed in a manner and of materials which will insure adequate drainage and sanitation in all phases of operation.

(2) Raw material upon arrival at the rendering plant shall be unloaded into a building for processing. All raw material shall be processed by approved methods within twenty-four hours after delivery to the rendering plant.

(3) Processing equipment shall be airtight, except for proper escapes for vapors caused by the cooking process.

(4) Cooking vapors shall be controlled and disposed of by approved methods.

(5) Vehicles used to transport raw material shall be so constructed as to prevent any drippings or seepings from such material from escaping from the truck. Such vehicles shall have body sides of sufficient height that no portion of any raw material transported therein shall be visible. All vehicles shall be provided with suitable top or covering to prevent the spread of disease by flies or other agents during the transportation of raw material.

(6) All vehicles and containers used in transporting raw material shall be disinfected at the earliest practicable time after unloading, and shall, in any event, be disinfected before again being taken upon a public highway or before leaving the rendering plant. Approved facilities and materials for disinfection shall be carried on vehicles transporting carcasses. Employees shall be required to wear rubber boots which shall be disinfected prior to entry to a farm.

(7) Approved facilities, means and methods for disinfection shall be available at the rendering plant at all times. Employees and employees' clothing coming in contact with raw material shall be disinfected before coming in contact with any finished products, or any portion of the plant in which the same are located. Rodent and fly control measures shall be practiced as a further means of prevention of the spread of disease. (1953, c. 732.)

§ **106-168.9. Transportation by licensee.**—Any person holding a license under the provisions of this article, or acting as a collector as herein defined, may haul and transport raw material, except such material as may be specifically prohibited by law or by the rules and regulations promulgated by the Commissioner, when such transporting and hauling is done in accordance with the provisions of this article. (1953, c. 732.)

§ **106-168.10. Disposal of diseased animals.**—Any person holding a license under the provisions of this article is authorized to kill diseased, sick, old or crippled animals on the premises of the owner upon his request; provided that no animal known to have tuberculosis, Bang's disease, anthrax, or any other disease for which quarantine may be imposed, shall be removed from any premises placed under quarantine without permission of the State Veterinarian, or his authorized agent. The licensee shall keep and make available to the Commissioner, upon request, such records as the Commissioner may require with respect to the collection and disposal of dead animals. (1953, c. 732.)

§ **106-168.11. Authority of agents of licensee.**—Authority granted to any person holding a valid license under the provisions of this article shall extend also to the agents and employees of such person while acting within the scope of their authority. All such agents and employees shall comply with the provisions of this article and rules and regulations not inconsistent therewith, and shall display evidence of such employment or agency upon proper request at any time while so acting. (1953, c. 732.)

§ **106-168.12. Commissioner authorized to adopt rules and regulations.**—The Commissioner of Agriculture is hereby authorized to make and establish reasonable rules and regulations, not inconsistent with the provisions of this article, after consulting the committee, for the proper administration and enforcement thereof. (1953, c. 732.)

§ **106-168.13. Effect of failure to comply.**—Failure to comply with the provisions of this article or rules and regulations not inconsistent therewith shall be cause of revocation of license, if such failure shall not be remedied within a reasonable time after notice to the licensee. Any person whose license is revoked may reapply for a license in the manner provided in this article for an initial application, except that the Commissioner shall not be required to cause the rendering plant and equipment of the applicant to be inspected by the committee until the expiration of thirty days from the date of revocation. (1953, c. 732.)

§ **106-168.14. Collectors subject to certain provisions.**—Any collector, as defined in this article, shall be subject to the provisions of subdivision (5) and subdivision (6) of G.S. 106-168.8 and the provisions of G.S. 106-168.9, and any rules and regulations adopted by the Commissioner pursuant thereto. (1953, c. 732.)

§ **106-168.15. Violation a misdemeanor.**—Any person conducting rendering operations or collecting raw material in violation of the provisions of this article shall be guilty of a misdemeanor and shall, upon conviction, be punished in the discretion of the court. (1953, c. 732.)

ARTICLE 15.

Inspection of Meat and Meat Products by Counties and Cities.

§ **106-169. Inspection; meat stamped as approved or condemned.**—All persons, firms, or corporations engaged in the business of operating a meat packing plant or plants within the State of North Carolina where more than one thousand beef cattle are slaughtered per annum, or more than ten thousand hogs or swine are slaughtered per annum, or more than five hundred sheep are slaughtered per annum shall have the meat or beef of said slaughtered cattle inspected by a veterinary surgeon duly licensed by the State of North Carolina; said inspector shall be elected by the governing body of the municipal corporation wherein said packing plant or plants is or are situated, or, if said packing plant be not situated within a municipal corporation, then by the board of county commissioners of the county wherein said packing plant is situated. Said inspector shall condemn all meats found to be unfit for human consumption. Said inspector shall cause all meats so condemned either to be destroyed or put to some use which shall not be dangerous for the public health. Each and every piece of meat or beef not condemned by said inspector shall be stamped by him in the usual manner; the stamp to be used to stamp said meat or beef shall bear the following words: "North Carolina State Meat Inspection—Approved (insert name of inspector), Inspector." All meat or beef condemned by said inspector shall be stamped by a similar stamp, except that the word "condemned" shall be inserted thereon instead of the word "approved." (Ex. Sess. 1924, c. 11, s. 1.)

Local Modification.—Rowan and city of Salisbury: 1953, c. 594, s. 2.

Cross Reference.—As to veterinaries, licensing, etc., generally, see § 90-179 et seq.

Editor's Note.—For a discussion of meat inspection, the right to destroy, due process of law, and damages for the destruction of meat which was really fit for human consumption, see 3 N.C.L. Rev. 27. The act is summarized in 3 N.C.L. Rev. 149.

§ **106-170. Fees for inspection.**—The charges for said inspection shall be as follows: Twenty-five cents for each and every beef cattle or cow inspected; ten cents for each and every hog inspected, and ten cents for each and every sheep inspected; ten cents for each and every veal calf inspected; no further inspection shall be necessary within the State except such inspection as is provided for in §§ 106-120 to 106-145. No further or other inspection charges for the inspection of meat or beef inspected as provided herein shall be made within the State. (Ex. Sess. 1924, c. 11, s. 2; 1925, c. 311.)

§ **106-171. Veterinary not available; who to inspect.** — Should no regularly licensed veterinary surgeon be available for the purposes of this article, then the duties provided herein to be performed by said inspector shall be performed by some competent person to be elected by the governing body of the municipal corporation wherein said packing plant is located, or if said packing plant be not located within a municipal corporation, then by the board of county commissioners of the county wherein said packing plant is located. (Ex. Sess. 1924, c. 11, s. 3.)

§ **106-172. Collection of fees; remuneration of inspector.**—The fees or inspection charges herein provided for shall be collected by the municipal corporation wherein said packing plant is located, or if said packing plant be not located within a municipal corporation, then by the board of county commissioners of the county wherein said plant is located; said fees or charges so collected shall be placed in the general fund of the municipal corporation or county collecting the same; the salary or remuneration of the inspector shall be fixed and paid by the municipal corporation or county by which said inspector is elected. (Ex. Sess. 1924, c. 11, s. 4.)

§ **106-173. Slaughterhouses, etc., under federal inspection, exempt from provisions of State inspection laws.**—The provisions of §§ 106-159 to 106-172 shall not be applicable to any slaughterhouse or meat packing plant, or any person, firm or corporation engaged in the business of the operation thereof, where such slaughterhouse or meat packing plant is operated under federal inspection pursuant to the provisions of the Meat Inspection Act of the United States, approved March 4, 1907, as amended. (1939, c. 329.)

Article 15A.

Meat Grading Law.

§ **106-173.1. Short title.**—The short title of this article shall be "The North Carolina Meat Grading Law." (1951, c. 1030, s. 1.)

§ **106-173.2. Definitions.**—For the purpose of this article, the following words, names and terms shall be construed respectively as follows:

(1) "Commissioner" means Commissioner of Agriculture of North Carolina.
(2) "Distributor" means any person, firm or corporation engaged in selling, handling or distributing meat.
(3) "Grader" means any person holding a grader's permit.
(4) "Grader's permit" means authority granted by the Commissioner to any person to grade meat in any plant or for any distributor holding a plant or distributor's permit.
(5) "Meat" means beef, lamb or pork.
(6) "Plant" means any person, firm or corporation engaged in slaughtering, packing or processing meat.
(7) "Plant or distributor's permit" means authority granted by the Commissioner to produce, handle, sell or distribute meat which is graded according to the provisions of this article. (1951, c. 1030, s. 2.)

§ **106-173.3. Program inaugurated.** — The Department of Agriculture shall inaugurate and conduct a program for the grading of meat which is slaughtered, processed or distributed in this State. (1951, c. 1030, s. 3.)

§ **106-173.4. Program shall be voluntary.**—No plant or distributor is required to participate in this program, but any plant or distributor may participate so long as said plant or distributor meets the requirements for a permit as provided by this article and continues to comply with those and other requirements which may be promulgated by the Board of Agriculture. (1951, c. 1030, s. 4.)

§ **106-173.5. Issuance of plant or distributor's permits.** — (a) Any plant which produces satisfactory evidence to the Commissioner that it holds a grade-A health rating by the North Carolina Department of Public Health, both as to its plant proper and surrounding premises, and that it has the facilities to provide for both ante and postmortem inspection of meat by a veterinarian or some other person acting under the supervision of a veterinarian, shall, upon application to the Commissioner, and the payment of a fee of one dollar ($1.00), be issued a plant or distributor's permit to grade meat as provided by this article.

(b) Any distributor who produces satisfactory evidence to the Commissioner that the meat which is handled by him is slaughtered, processed or produced under conditions which would satisfy the requirements set out in subsection (a) of this section shall, upon the payment of one dollar ($1.00), be issued a plant or distributor's permit to grade meat as provided by this article. (1951, c. 1030, s. 5.)

§ **106-173.6. Revocation of plant or distributor's permit.**—Any plant or disrtibutor's permit may be revoked or suspended by the Commissioner if the holder of such permit fails to continue to comply with the requirements for obtaining such permit, or any other rules, regulations and standards of the Department of Agriculture or any law of this State relating to the handling of meat, but no permit shall be revoked without due notice to the holder thereof and an opportunity for the holder to be heard. (1951, c. 1030, s. 6.)

§ **106-173.7. Grader's permits.**—A grader's permit, subject to the provisions of this article shall be issued by the Commissioner when sufficient proof is presented to him to satisfy him that the person applying for such permit is of good moral character and has had sufficient training and experience to qualify him to grade meat, and when such applicant has paid to the Department of Agriculture the sum of one dollar ($1.00). (1951, c. 1030, s. 7.)

§ **106-173.8. Revocation of grader's permit.**—Any grader's permit shall be revoked or suspended when it shall appear to the Commissioner that the holder of such permit has violated any rule, regulation or standard of the Department of Agriculture or any law of North Carolina relating to the handling of meat, but no permit shall be revoked without proper notice to the holder thereof and an opportunity for him to be heard. (1951, c. 1030, s. 8.)

§ **106-173.9. Supervision of program.**—The Department of Agriculture, upon receiving a request from a plant holding a plant permit, shall inaugurate and supervise a grading program for said plant. (1951, c. 1030, s. 9.)

§ **106-173.10. Grades.**—Each plant or distributor holding a plant or distributor's permit and participating in a meat grading program authorized by this article shall cause all graded meat handled by it to be classified in the following grades: "prime," "choice," "good," "commercial," "cutter," "utility" and "canner." These designations may be made only by a person holding a grader's permit and the standards of quality which are required to make up these grades shall be the same as those used by the federal meat grading agency to classify meats in these same grades. (1951, c. 1030, s. 10.)

§ **106-173.11. All meat to be stamped.**—Each plant or distributor holding a plant or distributor's permit shall, after a grader has determined the grade of any piece of meat handled by said plant or distributor, cause to be stamped on that piece of meat the grade name, the letters "N.C.D.A." and a letter, number or symbol to be assigned by the Department of Agriculture in order to identify the plant or distributor handling that piece of meat. (1951, c. 1030, s. 11.)

§ **106-173.12. Roller stamps to be rented.**—Each plant or distributor holding a plant or distributor's permit shall obtain from the North Carolina Department of Agriculture one or more sets of roller stamps and shall pay a rental fee not in excess of the amount required to procure and supply these stamps. These roller stamps shall remain the property of the Department of Agriculture and shall be returned to the Department of Agriculture upon the suspension or revocation of the plant or distributor's permit or upon the request of the Commissioner. (1951, c. 1030, s. 12.)

§ **106-173.13. Roller stamps, contents of.**—These roller stamps shall contain the letters "N.C.D.A." and a number, letter or other symbol to identify the plant or distributor using said stamp. The stamps shall also contain the words "prime," "choice," "good," "commercial," "utility," "cutter" and "canner" respectively. (1951, c. 1030, s. 13.)

§ **106-173.14. Reports by plants or distributors.**—Plants or distributors holding meat grading permits shall make reports regarding the number of animals slaughtered, number of animals graded, the grades within which these animals were classified and the origin of these animals, and such other information as the Commissioner may deem proper. These reports shall be filed when requested by the Commissioner and on the forms to be supplied by him. (1951, c. 1030, s. 14.)

§ **106-173.15. Fees.**—The Commissioner is authorized to establish a uniform system of fees to be charged by the Department of Agriculture and these fees shall be charged for services performed in the administration of this article. (1951, c. 1030, s. 15.)

§ **106-173.16. Rules and regulations; violation of article or regulations a misdemeanor.**—The Board of Agriculture is authorized, after public hearing following due public notice, to promulgate such rules, regulations, definitions and standards as may be necessary to carry out the provisions of this article. The violation of any of the provisions of this article, or any of the rules and regulations promulgated hereunder, shall constitute a misdemeanor and shall be punished in the discretion of the court. (1951, c. 1030, s. 16.)

ARTICLE 16.

Bottling Plants for Soft Drinks.

§ **106-174. Specifications of places of manufacture and sale.**—Every building or room used for the manufacture, bottling or preparation for sale of any soft drink shall be properly lighted and ventilated, and shall have floors of some material which can be flushed and washed clean with water. All manufacturing or bottling of soft drinks shall be conducted with due regard for the purity and wholesomeness of the product therein produced. (1935, c. 372, s. 1.)

§ **106-175. Soft drink defined.**—The term "soft drink" as used herein shall include all soda waters, orangeade, root beers, and similar beverages, carbonated or otherwise, or ingredients used in the preparation of same. (1935, c. 372, s. 2.)

§ **106-176. Establishment and equipment kept clean; containers sterilized.**—The floors, walls, ceilings, furniture, receptacles, implements, and machinery of every establishment where soft drinks are manufactured, bottled, stored, sold, or distributed shall at all times be kept in a clean, sanitary condition; all vessels, receptacles, utensils, tables, shelves, and machinery used in moving, handling, mixing, or processing must be thoroughly cleaned daily, all bottles and other containers used must be sterilized in caustic soda or alkali solution in not less than three percent alkali or other solution of the equivalent sterilizing effect as prescribed by the rules and regulations adopted by the Board of Agriculture. (1935, c. 372, s. 3; 1937, c. 232.)

§ **106-177. Protection from contamination.**—Soft drinks in the process of manufacture, preparation, bottling, storing, or distribution must be protected from flies, other insects and filthy products, and, as far as may be necessary, from all other foreign or injurious contamination. (1935, c. 372, s. 4.)

§ **106-178. Refuse removed daily.**—All refuse and other waste products subject to decomposition and decay incident to the manufacture, preparation, storing, selling, or distribution of soft drinks must be removed from the plant daily. (1935, c. 372, s. 5.)

§ **106-179. Syrup room screened.**—The doors, windows and other openings of the syrup room used for the preparation of soft drinks by bottling establishments shall be fitted with wire screens of not coarser than fourteen-mesh wire gauze and the door or doors shall be fitted with self-closing screens. (1935, c. 372, s. 6.)

§ **106-180. Washroom and toilet.**—Every bottling establishment shall be provided with washroom, and, if a toilet is attached, it must be of sanitary construction, and such toilet shall be separate and apart from any room used for the manufacture or bottling of soft drinks. (1935, c. 372, s. 7.)

§ **106-181. Use of deleterious substances prohibited.** — The use of soap bark or any other substance deleterious to health in soft drinks is prohibited. (1935, c. 372, s. 8; 1955, c. 271, s. 1.)

§ **106-181.1. Labeling.**—The bottle or container in which a soft drink is sold must bear the name of the product and the name and address of the manufacturer or jobber. (1935, c. 372, s. 8; 1955, c. 271, s. 2.)

§ **106-182. Enforcement by Commissioner of Agriculture; inspectors; obstruction a misdemeanor.**—It shall be the duty of the Commissioner of Agriculture to enforce the provisions of this article. The food inspectors or experts of the Department of Agriculture shall have authority, during business hours, to enter, for the purpose of inspection, all buildings or rooms used for the manufacture, bottling or handling of soft drinks, and to examine the condition of same, including products before and after manufacture, machinery and all implements used; and any person who shall hinder or prevent any inspector or expert of the Department in the performance of his duty in connection with this article shall be guilty of a violation thereof. (1935, c. 372, s. 9.)

§ **106-183. Violation of article a misdemeanor.**—Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars for the first offense, and for each subsequent offense in the discretion of the court. (1935, c. 372, s. 10.)

§ **106-184. Bottler's inspection fee.**—For the purpose of defraying expenses incurred in the enforcement of the provisions of this article, the owner, proprietor, or operator of each bottling plant or place where soft drinks are made or bottled operated in this State shall pay to the Commissioner of Agriculture an inspection fee of ten dollars during the month of June of each year or before any such bottling plant shall be operated thereafter. (1935, c. 372, s. 11.)

ARTICLE 17.

Marketing and Branding Farm Products.

§ 106-185. Establishment of standard packages, etc., authorized.—The purpose of this article is to give authority to investigate marketing conditions and to establish and maintain standard grades and packages and State brands for farm and horticultural crops and animal products. The term "farm products" as used hereafter in this article shall be construed to mean any or all of the crops or products named above in this section. (1919, c. 325, s. 1; C. S., s. 4781; 1921, c. 140.)

§ 106-186. Power to employ agents and assistants. — The Board of Agriculture is charged with the execution of the provisions of this article, and has authority to employ such agents and assistants as may be necessary, fix their compensation and define their duties, and may require bonds in such amount as they may deem advisable, conditioned upon the faithful performance of duties by any employee or agent. (1919, c. 325, s. 2; C. S., s. 4782.)

§ 106-187. Board of Agriculture to investigate marketing of farm products.—It shall be the duty of the Board of Agriculture to investigate the subject of marketing farm products, to diffuse useful information relating thereto, and to furnish advice and assistance to the public in order to promote efficient and economical methods of marketing farm products, and authority is hereby given to gather and diffuse timely information concerning the supply, demand, prevailing prices, and commercial movement of farm products, including quantities in common and cold storage, and may interchange such information with the United States Department of Agriculture. (1919, c. 325, s. 3; C. S., s. 4783.)

§ 106-188. Promulgation of standards for receptacles, etc.—After investigation, and from time to time as may be practical and advisable, the Board shall have authority to establish and promulgate standards of opened and closed receptacles for, and standards for the grade and other classification of farm products, by which their quantity, quality, and value may be determined, and prescribe and promulgate rules and regulations governing the marks, brands, and labels which may be required for receptacles for farm products, for the purpose of showing the name and address of the producer or packer; the quantity, nature and quality of the product, or any of them, and for the purpose of preventing deception in reference thereto, and for the purpose of establishing a State brand for any farm product produced in North Carolina: Provided, that any standard for any farm product or receptacle therefor, or any requirement for marking receptacles for farm products, now or hereafter established under authority of the Congress of the United States, shall forthwith, as far as applicable, be established or prescribed and promulgated as the official standard or requirement in this State: Provided, that no standard established or requirement for marking prescribed under this article shall become effective until the expiration of thirty days after it shall have been promulgated. (1919, c. 325, s. 4; C. S., s. 4784.)

§ 106-189. Sale and receptacles of standardized products must conform to requirements.—Whenever any standard for the grade or other classification of any farm product becomes effective under this article no person thereafter shall pack for sale, offer to sell, or sell within this State any such farm product to which such standard is applicable, unless it conforms to the standard, subject to such reasonable variations therefrom as may be allowed in the rules and regulations made under this article: Provided, that any farm product may be packed for sale, offered for sale, or sold, without conforming to the standard for grade or other classification applicable thereto, if it is especially described as not graded or plainly marked as "Not graded." The Board of Agriculture, or the Commissioner of Agriculture, and their authorized agents, are authorized to issue "stop-sale" orders which shall prohibit further sale of the products if they have reason to believe such products are being offered, or exposed, for sale in violation of any of the provisions of this article until the law has been complied with or said violations otherwise legally disposed of.

Whenever any standard for an open or closed receptacle for a farm product shall be made effective under this article no person shall pack for sale in and deliver in a receptacle, or sell in and deliver in a receptacle, any such farm product to which such standard is applicable, unless the receptacle conforms to the standard, subject to such variations therefrom as may be allowed in the rules and regulations made under this article, or unless the receptacle be of a capacity twenty-five percent less than the capacity of the minimum standard receptacle for the product: Provided, that any receptacle for such farm product of a capacity within twenty-five percent of, or larger than, the minimum standard receptacle for the product may be used if it be specifically described as not a standard size, or be conspicuously marked with the phrase, "Not standard size," in addition to any other marking which may be prescribed for such receptacles under authority given by this article.

Whenever any requirement for marking a receptacle for a farm product shall have been made effective under this article no person shall sell and deliver in this State any such farm product in a receptacle to which such requirement is applicable unless the receptacle be marked according to such requirements. (1919, c. 325, s. 5; C. S., s. 4785; 1943, c. 483.)

Editor's Note. — For comment on the 1943 amendment, see 21 N.C.L. Rev. 329.

§ **106-190. Inspectors or graders authorized; revocation of license.**—The Board is authorized to employ, license, or designate persons to inspect and classify farm products and to certify as to the grade or other classification thereof, in accordance with the standards made effective under this article, and shall fix, assess and collect, or cause to be collected, fees for such services. Whenever, after opportunity for a hearing is afforded to any person employed, licensed, or designated under this section, it is determined that such person has failed to classify farm products correctly in accordance with the standards established therefor under this article, or has violated any provision of this article, or of the rules and regulations made hereunder, the Board may suspend or revoke the employment, license, or designation of such person. Pending investigation the person in charge of this work may suspend or revoke any such appointment, license, or designation temporarily without hearing. (1919, c. 325, s. 6; C. S., s. 4786.)

§ **106-191. Appeal from classification.**—The owner or person in possession of any farm product classified in accordance with the provisions of this article may appeal from such classification under such rules and regulations as may be prescribed. (1919, c. 325, s. 7; C. S., s. 4787.)

§ **106-192. Certificate of grade prima facie evidence.**—A certificate of the grade or other classification of any farm product issued under this article shall be accepted in any court of this State as prima facie evidence of the true grade or other classification of such farm product at the time of its classification. (1919, c. 325, s. 8; C. S., s. 4788.)

§ **106-193. Unwholesome products not classified; health officer notified.**—Any person employed, licensed, or designated shall neither classify nor certify as to the grade or other classification of any farm product which, in his judgment, is unwholesome or unfit for food of man or other animal. If, in the performance of his official duties, he discovers any farm product which is unwholesome or unfit for food of man or for other animal for which it is intended, he shall promptly report the fact to a health officer of the State or of any county or municipality thereof. (1919, c. 325, s. 9; C. S., s. 4789.)

§ **106-194. Inspection and sampling of farm products authorized.**—Agents and employees are authorized from time to time to ascertain the amount of any farm products in this State, to inspect the same in the possession of any person engaged in the business of marketing them in this State, and to take samples of such products. In carrying out these purposes agents and employees are authorized to enter on any business day, during the usual hours of business, any storehouse, warehouse, cold storage plant, packing house, stockyard, railroad yard, railroad car, or any other building or place where farm products are kept or stored by any person engaged in the busines of marketing farm products. (1919, c. 325, s. 10, 11; C. S., s. 4790.)

§ **106-195. Rules and regulations; how prescribed.** — The Board of Agriculture is authorized to make and promulgate such rules and regulations as may be necessary to carry out the provisions of this article. Such rules and regulations shall be made to conform as nearly as practicable to the rules and regulations of the Secretary of Agriculture of the United States, prescribed under any act of Congress of the United States relating to the marketing of farm products. (1919, c. 325, s. 12; C. S., s. 4791.)

§ **106-196. Violation of article or regulations a misdemeanor.**—Any person who violates any provision of this article, or of the rules and regulations made under the article for carrying out its provisions, or fails or refuses to comply with any requirement thereof, or who wilfully interferes with agents or employees in the execution, or on account of the execution, of his or their duties, shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under this article shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than thirty days, or by both in the discretion of the court. (1919, c. 325, ss. 13, 14; C. S., s. 4792.)

Article 18.

Shipper's Name on Receptacles.

§ **106-197. Shipping fruit or vegetables not having grower's or shipper's name stamped on receptacle a misdemeanor.**—Any person or persons, firm or corporation selling or offering for sale or consignment any barrel, crate, box, or other case, package or receptacle containing any berries, fruit, melons, potatoes, vegetables, truck or produce of any kind whatsoever, to be shipped to any point within or without the State, without the true name of the grower or packer either written, printed, stamped or otherwise placed thereon in distinct and legible characters, shall be guilty of a misdemeanor and fined not exceeding fifty dollars or imprisoned not exceeding thirty days. This section shall not apply to railroads, express companies and other transportation companies selling or offering for sale for transportation or storage charges or any other charges accruing to said railroads, express companies or other transportation companies any barrel, crate, box, or other case, package or receptacle containing berries, fruit, melons, potatoes, vegetables, truck or produce. (1915, c. 193; C. S., s. 5087.)

Article 19.

Trademark for Standardized Farm Products.

§ **106-198. Adoption, design and copyright of trademark, etc.**—The Board of Agriculture shall adopt an official trademark, brand, or label, the design of which shall incorporate the words "Tar Heel" superimposed on an outline map of North Carolina, to identify North Carolina farm products of grade and quality in keeping with standards to be set up by the Board governing its use. The Board of Agriculture shall cause this trademark to be copyrighted to prevent imitation and infringement. (1941, c. 155, s. 1.)

§ **106-199. Regulation of use of trademark.**—The trademark may be used only in the manner prescribed by the Board of Agriculture and under the rules and regulations to be laid down by the Board for its protection and use, and only on products meeting the quality, condition, pack and grade standards prescribed by the Board consistent with §§ 106-185 to 106-196. No person, firm or corporation shall use this trademark on any product until the official inspection service of the Department of Agriculture certifies that the product meets the requirements of quality, condition, pack and grade standard set up by the Board for the product. (1941, c. 155, s. 2.)

§ **106-200. License for use of trademark.**—Growers, handlers, shippers or processors may procure a license to use the trademark on standardized products by applying to the Commissioner of Agriculture. The Commissioner may investigate the integrity and business methods of each applicant and may refuse licenses to applicants whose use might endanger the reputation of the trademark. The Commissioner may suspend, revoke or cancel the license of any user who violates the terms of his license or of any rule or regulation of the Board concerning its use. The Board of Agriculture may charge reasonable and uniform fees for the issuance of these licenses and for the use of the trademark by these licensees, and shall use these revenues to apply on the cost of administering this article and to carry out a program of merchandising and advertising for standardized identified North Carolina farm products. (1941, c. 155, s. 3.)

§ **106-201. Licensing of providers of approved designs; furnishing list of growers, etc.**—To facilitate the procurement of tags, labels, packages, bags or containers properly designed and constructed to display the official North Carolina State trademark, the following regulations shall be established:

(1) Manufacturers or distributors of tags, labels, packages, bags or containers shall apply to the Commissioner of Agriculture for a provider's license, and shall submit samples or designs of such tags, labels, packages, bags or containers for the Commissioner's approval as to their construction, adaptability and practicability for the use planned. The Commissioner shall license manufacturers or distributors of approved designs as approved providers of such articles, subject to rules, regulations and a reasonable license fee to be prescribed by the Board of Agriculture.

(2) No such license shall be issued until the provider agrees to furnish such trademarked supplies only to persons, partnerships or corporations within the State licensed to use the trademark. The approved provider shall immediately report to the Commissioner of Agriculture, on blanks provided for that purpose, each sale and shipment of such authorized supplies, the name of the purchaser, the quantity and type of supplies sold, and the point to which it was shipped or delivered. The Commissioner shall furnish approved providers with current lists of growers, shippers, handlers or processors licensed to use the North Carolina trademark.

(3) The Commissioner of Agriculture may suspend, revoke or cancel licenses of approved providers for violation of any of the terms of this license, in which case equitable arrangements will be made for disposal of manufactured goods in stock. (1941, c. 155, s. 4.)

§ **106-202. Violation made misdemeanor.**—Any person, firm or corporation who knowingly violates any of the provisions of this article or any of the rules and regulations promulgated under it by the Board of Agriculture, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than one year, or both, for each offense. (1941, c. 155, s. 5.)

Article 20.

Standard Weight of Flour and Meal.

§§ **106-203 to 106-209**: Repealed by Session Laws 1945, c. 280, s. 2.

Cross Reference.—As to act establishing uniform weights and measures generally, see §§ 81-1 to 81-22.

Article 21.

Artificially Bleached Flour.

§ **106-210. Collection and analysis of samples; publication of results.**—For the purpose of regulating the labeling and sale of artificially bleached flour, the Board of Agriculture shall cause inspection to be made from time to time, and samples of flour offered for sale in the State obtained, and shall cause same to be analyzed or examined by the State food chemist or other experts of the Department of Agriculture for the purpose of determining if same has been artificially bleached or sold in violation of this article. The Board of Agriculture is hereby authorized to make such publication of the results of the examination, analysis and so forth as they may deem proper. (1917, c. 249, s. 1; C. S., s. 4801.)

§ **106-211. Entry to secure samples.**—The food inspectors of the Department of Agriculture shall have authority, during business hours, to enter all stores, warehouses, and other places where food products are stored or offered for sale for the purpose of inspection and obtaining samples of same. (1915, c. 278, s. 2; C. S., s. 4802.)

§ **106-212. Commissioner to notify solicitor of violations and certify facts.**—If it shall appear from such inspection or examination or both that any of the provisions of this article have been violated, the Commissioner of Agriculture shall certify the facts to the solicitor in the district in which the violation was committed, and furnish that officer with the facts in the case, duly authenticated by the expert, under oath, who made the examination. (1915, c. 278, s. 3; C. S., s. 4803.)

§ **106-213. Label for artificially bleached flour.** — Flour artificially bleached with nitrogen peroxide or chlorine or any other agent, when offered for sale in North Carolina, shall have plainly marked or printed in a conspicuous place on the sack, barrel, or other package, in letters not smaller than five-eighths of an inch in size, the legend: "Artificially Bleached." (1915, c. 278, s. 4; C. S., s. 4804.)

§ **106-214. Statement required to be filed before sale.**—Before any artificially bleached flour shall be offered for sale in this State the manufacturer, dealer, agent, or person who causes it to be sold or offered for sale, by sample or otherwise, within this State shall file with the Commissioner of Agriculture a statement that it is desired to offer such bleached flour for sale in North Carolina, and the name of the manufacturer or jobber and the brand name of the flour if it has such. (1915, c. 278, s. 5; C. S., s. 4805.)

§ **106-215. Inspection fee for registering brands.**—For the purpose of defraying expenses incurred in the enforcing of the provisions of this article, for each and every separate brand of artificially bleached flour registered and before being offered for sale in the State, the manufacturer, dealer, or agent registering same shall pay to the Commissioner of Agriculture an inspection fee of fifteen dollars, and during the month of January in each year, or before such flour is offered for sale in the State, said fees to be used by the Board and Commissioner of Agriculture for executing the provisions of this article. (1917, c. 249, s. 2; C. S., s. 4806.)

§ **106-216. Violation of article a misdemeanor.**—Any person or persons, firm or corporation, by himself or agent, who shall sell, offer for sale, or have in his possession with intent to sell any artificially bleached flour not labeled or branded as required in § 106-213, or who shall violate any of the provisions of this article, shall be guilty of a misdemeanor, and for such offense, upon conviction of same, shall be fined not to exceed fifty dollars for the first offense and for each subsequent offense not to exceed one hundred dollars, or be imprisoned not to exceed six months, or both, in the discretion of the court. (1915, c. 278, s. 7; C. S., s. 4807.)

§ **106-217. Forfeiture for unauthorized sale; release from forfeiture.**—The flour offered for sale in violation of this article shall be subject to seizure, condemnation, and sale by the Commissioner of Agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizers; and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the treasury for use in executing the provisions of this article: Provided, that the Commissioner of Agriculture may, in his discretion, for the first offense, order the release of the flour seized, upon payment by the owner of the flour of the expenses incurred by the Department in the seizure of the same, and upon compliance with the requirements of this article, when it shall appear to the Commissioner that said owner did not intend to violate the law. (1915, c. 278, s. 7; C. S., s. 4808.)

§ **106-218. Seller to furnish samples on payment.**—Every person who offers for sale or delivers flour to a purchaser shall, within business hours, and upon tender or payment of the selling price, furnish a sample of flour as demanded, to any person duly authorized by the Board of Agriculture to secure same, and who shall apply for such sample. (1915, c. 278, s. 8; C. S., s. 4809.)

§ **106-219. Refusing samples or obstructing article a misdemeanor.**—Any manufacturer or dealer who refuses to comply, upon demand, with the requirements of § 106-218, or any person who shall wilfully impede, hinder, or otherwise prevent or attempt to prevent, any chemist or inspector in the perfomance of his duty in connection with this article, shall be guilty of a misdemeanor, and upon conviction be fined not less than ten dollars and not more than one hundred dollars, or imprisoned, in the discretion of the court. (1915, c. 278, s. 8; C. S., s. 4810.)

ARTICLE 21A.

Enrichment of Flour, Bread, Corn Meal and Grits.

§ **106-219.1. Title of article.**—This article may be cited as "The North Carolina Flour, Bread, and Corn Meal Enrichment Act." (1945, c. 641, s. 1.)

Editor's Note. — For comment on act from which this article was codified, see 23 N.C.L. Rev. 344.

§ **106-219.2. Definitions.**—For the purpose of this article:

(1) "Commissioner" means the Commissioner of Agriculture; "Board" means the Board of Agriculture.

(2) "Corn grits" means all types of corn grits intended for human consumption.

(3) "Corn meal" means all types of corn meal intended for human consumption.

(4) "Enriched" means restored or brought up to content of vitamins and minerals as described in this article.

(5) "Flour" (white flour) means the fine-grained product obtained from the milling of wheat, with or without leavening, bleaching, or other agents for similar purposes. The adjective "whole wheat" means the variety with no part of the wheat berry removed; "white" means the bolted or refined type with parts of the wheat berry removed; but the term "flour" shall not include flours such as specialty cake, pancake and pastry flours which are not used for bread, roll, bun or biscuit making.

(6) "North Carolina Food, Drug and Cosmetic Act" refers to article 12 of this chapter.

(7) "Person" includes individual, partnership, corporation, and association.

(8) "White bread" means bread made of "white flour," also rolls and biscuits of the bread-dough type; but shall not include the extensively sweetened, iced or cake type of product. (1945, c. 641, s. 2; 1955, c. 630, s. 1.)

§ **106-219.3. Required vitamins and minerals.**—On and after the effective date of this article, it shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale in this State any products covered herein which do not contain the vitamins and minerals as prescribed in the following formulae:

(1) White flour shall contain in each pound not less than two (2.0) and not more than two and five tenths (2.5) milligrams of vitamin B (thiamine); not less than one and two tenths (1.2) and not more than one and five tenths (1.5) milligrams of riboflavin; not less than sixteen (16.0) and not more than twenty (20.0) milligrams of niacin (nicotinic acid); not less than thirteen (13.0) and not more than sixteen and five tenths (16.5) milligrams of iron; except that self-rising flour shall contain, in addition to the above ingredients, not less than five hundred (500) and not more than one thousand five hundred (1500) milligrams of calcium.

(2) White bread shall contain in each pound not less than one and one tenth (1.1) and not more than one and eight tenths (1.8) milligrams of vitamin B (thiamine); not less than seven tenths (0.7) and not more than one and six tenths (1.6) milligrams of riboflavin; not less than ten (10.0) and not more than fifteen (15.0) milligrams of niacin (nicotinic acid); not less than eight (8.0) and not more than twelve and five tenths (12.5) milligrams of iron.

(3) Corn meal and corn (hominy) grits shall contain in each pound not less than two (2.0) and not more than three (3.0) milligrams of vitamin B_1 (thiamine); not less than one and two tenths (1.2) and not more than one and eight tenths (1.8) milligrams of riboflavin; not less than sixteen (16.0) and not more than twenty-four (24.0) milligrams of niacin (nicotinic acid); not less than thirteen (13.0) and not more than twenty-six (26.0) milligrams of iron.

(4) Enrichment may be accomplished by the addition of vitamins from a natural or synthetic source, or other harmless and assimilable enriching ingredients which will accomplish the purpose of this article and will be acceptable under the North Carolina Food, Drug and Cosmetic Act.

(5) The enriching ingredients required under subdivisions (1), (2) and (3) of this section may be added in a harmless carrier which does not impair the enriched products; provided,

a. That such carrier is used only in quantity necessary to effect uniform mixture in the finished products;

b. That the concentration of enriching ingredients does not differ more than fifteen percent (15%) between top and bottom of containers following subjection to normal handling and transportation; and

c. That enriched grits be so stabilized that loss of vitamins and minerals from customary rinsing before cooking shall not exceed ten percent (10%). (1945, c. 641, s. 3; 1955, c. 630, s. 2.)

§ **106-219.4. Products exempted.**—The terms of this article shall not apply:

(1) To white flour, corn meal and corn grits sold to bakers or other commercial secondary processors; provided, the purchaser furnishes to the seller an approved certificate of intent to use said flour, grits or corn meal solely in the production of the products covered in this article; or in the manufacture of legitimate products not covered by the provisions of this article.

(2) To whole wheat flour or bread made from the entire wheat berry; provided, that flour or bread made from the whole wheat berry, or various parts thereof, mixed with white flour shall contain vitamins and minerals equal to that required for the respective enriched products as defined in § 106-219.3 (1) and (2).

(3) To the further enrichment of the products covered in this article when done so as to comply with standards and labeling requirements under the North Carolina Food, Drug and Cosmetic Act.

(4) To products ground for the producer's use from the producer's grain; provided, that such products shall become subject to this article when offered for sale. (1945, c. 641, s. 4; 1955, c. 630, s. 3.)

§ **106-219.5. Enforcement by Commissioner.**—(a) The provisions of this article shall be enforced by the Commissioner of Agriculture, who is hereby directed, and he or his duly authorized agents shall have the authority to conduct examinations and investigations and, for the purpose of inspection and collection of samples for analysis, to enter, during business hours, all mills, storages, or other establishments or vehicles where products covered in this article are, or upon reasonable ground are believed to be processed, contained, transported or sold.

(b) In the event that there be shortage or imminence of shortage of enriching ingredients required under § 106-219.3 (1) and (2), the Commissioner shall obtain the facts from all proper and authorized sources or from testimony produced at public hearing and if findings show that the distribution of a food may be substantially impeded by enforcement, he shall immediately order suspension of such requirements as threaten distribution; provided, such suspension shall be revoked as soon as supplies of enriching ingredients are again available. (1945, c. 641, s. 5.)

§ **106-219.6. Board authorized to make regulations; hearings.** — The authority for promulgating regulations for the efficient enforcement of this article, and for bringing into force the provisions under § 106-219.3 (4) is hereby vested in the Board of Agriculture, and the Board is hereby authorized to make standards hereunder conform insofar as practicable, with interstate standards. Actions under this section shall follow proper public notice and hearing. (1945, c. 641, s. 6; 1955, c. 630, s. 4.)

§ **106-219.7. Violation a misdemeanor.**—Any person who violates any of the provisions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine for each offense of not more than one hundred dollars ($100.00) or to imprisonment of not more than thirty days, or to both such fine and imprisonment. (1945, c. 641, s. 7.)

§ **106-219.8. Application of article 12.**—All of the provisions of article 12 of this chapter, said article being entitled "Food, Drugs and Cosmetics," as far as the same are pertinent shall be applicable to the foods, ingredients and substances defined in this article, and all of the remedies contained in said article 12 are hereby made available to the Commissioner, and to the Commissioner and the Board, for the enforcement of this article. (1945, c. 641, s. 8.)

§ **106-219.9. Exemptions from article.**—This article shall not apply to the delivery by a miller to a producer or owner of corn meal or corn grits, ground by the miller from the producer's or owner's corn for use in the producer's or owner's own home when the miller is paid in corn for such milling service; however, if said producer or owner desires the health benefit for his family and requests enrichment the miller is required by this article to enrich according to the hereinbefore mentioned standards.

Nothing in this article shall prevent the manufacture and sale of plain or enriched corn meal or grits when labeled as such; nor shall this article apply to corn raised, ground and consumed, within the borders of any county.

The provision of this article shall not apply to grist mills operated by two or less employees. (1945, c. 641, s. 9½ 1955, c. 630, ss. 4½-5½.)

ARTICLE 22.

Inspection of Bakeries.

§ **106-220. Sanitary condition of rooms; drainage; toilets.**—Every room or other place occupied or used as a bakery for the preparation, production, storage, or display of bread, cakes, or other bakery products intended for sale for human consumption, shall be clean, properly lighted, and ventilated. The floors, walls, and ceilings of the rooms in which the dough or pastry is mixed, handled, or prepared for baking, or in which the bakery products or ingredients of such products are otherwise handled, stored, or displayed, shall be kept and maintained in a clean and sanitary condition. All openings into such rooms, including windows and doors, shall be properly screened to exclude flies. Every such bakery shall be provided with adequate drainage and suitable wash sinks. If a toilet or water closet is maintained in connection with such bakery, it must be of sanitary construction, and such toilet or water closet shall be well ventilated and kept in a sanitary condition. (1921, c. 173, s. 1; C. S., s. 7251(k).)

§ **106-221. Tables, shelves and implements; refuse; sleeping rooms.**—All tables, shelves, troughs, trays, receptacles, utensils, implements, and machinery used in preparing, mixing or handling bakery products or the ingredients of same, must be thoroughly cleaned daily when in use, and kept in a clean, sanitary condition. All refuse, dirt, and waste matter subject to decomposition and decay incident to the production of bakery products must be removed from the bakery daily. The workrooms of bakeries, where bakery products are made, stored or displayed, shall not be used as sleeping or living rooms, and shall at all times be separate and closed from any such room. (1921, c. 173, s. 2; C. S., s. 7251(1).)

§ **106-222. Employees; sitting or lying on tables; cleanliness.** — No employee or other person shall sit or lie upon any of the tables, troughs, shelves, etc., which are used for the dough or other bakery products. Before beginning the work of preparing or mixing the ingredients, or after using toilet or water closet, every person engaged in the preparation or handling of bakery products shall wash the hands and arms thoroughly, and for this purpose sufficient wash basins or sinks, together with soap and clean towels, shall be provided by the bakery. (1921, c. 173, s. 3; C. S., s. 7251(m).)

§ **106-223. Use of tobacco.**—No person shall use tobacco in any form in any bakery or bread manufacturing plant where bread or other bakery products are manufactured or stored. (1921, c. 173, s. 3a; C. S., s. 7251(n).)

§ **106-224. Ingredients and materials.** — All ingredients used in the manufacture or making of bread or any other bakery products shall be pure and wholesome, and shall contain no substance that is poisonous or deleterious to health. All materials and ingredients used in bakery products shall be stored, handled, and kept in a way to protect them from spoilage and contamination, and no material shall be used which is spoiled or contaminated, or which may render the product unwholesome or unfit for food. (1921, c. 173, s. 4; C. S., s. 7251(o).)

§ **106-225. Adulterants; stale products; infections.**—No material or ingredient may be used which may deceive the purchaser, or which lowers or lessens the nutritive value of the product. No bread or other bakery products shall be sold or offered for sale for human food that has by age or otherwise become stale. All handling or sale of bread or other bakery products and all practices connected therewith shall be conducted so as to prevent the distribution of contamination or diseases and so as to prevent the distribution of the bakery infection in bread commonly known as "rope" or other bakery infections. No bread or other bakery products shall be returned by any dealer, restaurant, cafe or hotel keeper to bakery or distributor after same has been in stock where it may have been subject to contamination, and no bakery or distributor shall directly or indirectly accept any such bread or other bakery products or make any allowance for such products. (1921, c. 173, s. 5; C. S., s. 7251(p); 1925, c. 286.)

§ **106-225.1. Bakery products containing souvenirs, trinkets, etc., which may endanger consumers.**—No bread or other bakery product shall contain or have in direct contact with it trinkets, metal objects, money, pictures, cardboard cutouts, balloons or other objects or materials, by way of souvenirs, premiums or otherwise, which may endanger consumers by contamination arising from insanitation, from contact with printing inks, paints or other coatings, materials or substances which are not suitable for contact with food or which may in any way expose consumers to danger of injury because of biting into or swallowing such materials or objects: Except, that these provisions shall not be interpreted to prohibit the safe and proper use of such items as cake supports, decorations and trimmings or the placing of such objects as dishes and spoons in unfinished foods when this is done in a manner which in no way endangers consumers. (1949, c. 985.)

§ **106-225.2. New bags or other new containers required for grain cereal products.**—No person, firm, association, or corporation, and no flour, corn or other cereal mill, or the owner or operator of same, and no bakery or food processing establishment, or the owner or operator of same, shall do, or suffer or permit to be done, any of the following acts:

(1) Sell or offer for sale any flour, corn meal, or other grain cereal product for human consumption which has been packed in bags or containers that have been previously used for any purpose, or

(2) Use any except new bags or other new containers for the packing of flour, corn meal or other grain cereal products for human consumption, or

(3) Import, ship, or cause to be shipped into the State of North Carolina

any flour, corn meal or other grain cereal product for human consumption unless such products are packed in new bags or other new containers which have not been previously used, or

(4) Use in foods for human consumption any flour, corn meal or other grain cereal product which has been packed in used bags or in other containers which have been previously used. (1949, c. 985.)

§ **106-226. Department of Agriculture to enforce law; examination of plant and products.**—It shall be the duty of the Department of Agriculture to enforce this article, and the Board of Agriculture shall cause to be made by the experts of the Department such examinations of plants and products named herein as are necessary to insure proper compliance with the provisions of this article. For the purpose of inspection, the authorized experts of the Department shall have authority, during business hours, to enter all bakeries or storage rooms where bakery products are made, stored, or kept, and any person who shall prevent or attempt to prevent any duly authorized expert in the performance ot his duty in connection with this article, shall be guilty of a violation of this article. (1921, c. 173, s. 6; C. S., s. 7251(q).)

§ **106-227. Closing of plant; report of violation of article to solicitor.**—If it shall appear from examination that any provision of this article has been violated, the Commissioner of Agriculture shall have authority to order the bakery or place closed until the law has been complied with. If the owner or operator of same refuses or fails to comply with the law, the Commissioner shall then certify the facts in the case to the solicitor in the district in which the violation was committed. (1921, c. 173, s. 7; C. S., s. 7251(r).)

§ **106-228. Regulations; establishment; violation.** — The Board of Agriculture is authorized to establish such regulations, not in conflict with this article, as may be necessary to make provisions of this article effective, and to insure the proper compliance of same, and a violation of the regulations shall be deemed to be a violation of this article. (1921, c. 173, s. 8; C. S., s. 7251(s).)

§ **106-229. Inspection fee.**—For the purpose of defraying expenses incurred in the enforcement of this article the owner or operator of each public bakery or bakery furnishing bakery products to the public operated in this State shall pay to the Commissioner of Agriculture during the month of May of each year, an inspection fee of ten dollars: Provided, that no inspection fee shall be required of farm women in North Carolina who make cakes and breads and sell the same on the home demonstration curb markets. (1921, c. 173, s. 9; C. S., s. 7251(t); 1937, c. 281.)

§ **106-230. Violation of article a misdemeanor.**—Any person, firm, or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars for the first offense, and for each subsequent offense in the discretion of the court. (1921, c. 173, s. 10; C. S., s. 7251(u).)

§ **106-231. Inspectors.**—The inspectors who shall carry out the provisions of this article shall be the same inspectors who shall be sent out by the Department of Agriculture to inspect bottling works and general food inspections. (1921, c. 173, s. 10a; C. S., s. 7251(v).)

§ **106-232. Article supplemental to municipal ordinances.**—Nothing in this article shall have the effect of repealing or rendering void ordinances upon this subject now in force in any municipality in North Carolina, but this article shall be construed to be supplemental and in addition thereto. (1921, c. 173, s. 11; C. S., s. 7251(w).)

Article 23.

Oleomargarine.

§ **106-233. Definitions; singular or plural.**—(a) The word "person" shall mean person, firm, or corporation, either principal or agent.

(b) Any word used shall indicate the singular or plural as the case demands.

(c) The word "oleomargarine" shall mean: All substance heretofore known as oleomargarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of tallow, beef extracts, suet, lard oil, fish oil, or fish fat, vegetable oil, annato, and other coloring matter, intestinal fat and offal fat, if

(1) Made in imitation or semblance of butter, or
(2) Calculated or intended to be sold as butter or for butter, or
(3) Churned, emulsified, or mixed in cream, milk, water, or other liquid and containing moisture in excess of one per centum of common salt.

This section shall not apply to puff-pastry shortening not churned or emulsified in milk or cream, and having a melting point of one hundred and eighteen degrees Fahrenheit or more, nor to any of the following containing condiments or spices: salad dressings, mayonnaise dressings, or mayonnaise products. As used in this article, the term "oleomargarine" shall be deemed applicable to the food product known as margarine and any requirement herein contained for labeling or display of the word "oleomargarine" shall be deemed sufficiently complied with by the use of the word "margarine." (1931, c. 229, s. 1; 1949, c. 978, s. 1.)

§ **106-234:** Repealed by Session Laws 1949, c. 978, s. 2.

§ **106-235:** Repealed by Session Laws 1963, c. 1135.

§ **106-236. Display of signs.**—(a) Marking Containers.—It shall be unlawful for any person or any agent thereof to sell or offer, or expose for sale, or have in possession with intent to sell, any oleomargarine which is not marked and distinguished by the word "oleomargarine" on the outside of each tub, package, or parcel.

(b) Notice in Public Eating Places.—No person shall possess in a form ready for serving yellow oleomargarine at a public eating place unless a notice that oleomargarine is served is displayed prominently and conspicuously in such place and in such manner as to render it likely to be read and understood by the ordinary individual being served in such eating place or is printed or is otherwise set forth on the menu in type or lettering not smaller than normally used to designate the serving of other food items; and no person shall serve yellow oleomargarine at a public eating place, whether or not any charge is made therefor, unless each separate serving bears or is accompanied by labeling identifying it as oleomargarine. (1931, c. 229, s. 4; 1939, c. 282, s. 3; 1945, c. 523, s. 3; 1949, c. 978, s. 4.)

§ **106-237. Enforcement of article; revocation of license.** — This article shall be administered and enforced by the State Department of Agriculture, which shall prescribe necessary rules and regulations therefor. Any license which is issued under the terms and conditions prescribed in § 106-235 can be revoked by the State Commissioner of Agriculture upon the submission to him of evidence that this article has been violated by the holder of such license. (1931, c. 229, s. 5.)

Editor's Note.—Section 106-235, referred to in the second sentence, was repealed by Session Laws 1963, c. 1135.

§ **106-238. Penalties.**—Every person, firm, or corporation, and every officer, agent, servant, or employee of such person, firm, or corporation who violates any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or by imprisonment in the county jail for not more than three months, or both, at the discretion of the court. (1931, c. 229, s. 6.)

Article 24.

Excise Tax on Certain Oleomargarines.

§ **106-239. Tax imposed; rules and regulations; penalties; disposition of proceeds.**—There is hereby imposed an excise tax of ten cents per pound on all oleomargarine sold, offered or exposed for sale, or exchanged in the State of North Carolina, containing any fat and/or oil ingredient other than any of the following fats and/or oils: Cottonseed oil, peanut oil, corn oil, soya bean oil, oleo oil from cattle, oleo stock from cattle, oleo stearine from cattle, neutral lard from hogs, or milk fat or any other vegetable fat or oil produced in the United States of America from agricultural commodities grown or produced in the United States of America. Such excise tax shall be in the form of a revenue stamp in such denominations as will best carry out the provisions of the law. Said stamps shall be properly safeguarded as to their manufacture, preservation and distribution and shall be in the charge of the State Department of Agriculture.

The State Department of Agriculture is hereby empowered to promulgate such rules and regulations as are consistent with the provisions of this section.

Any person violating any of the provisions of this section, or any of the rules or regulations promulgated by the State Department of Agriculture for the purpose of carrying out its provisions, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than twenty-five dollars ($25.00) nor more than two hundred dollars ($200.00), or imprisoned in the county jail not to exceed two months, or both fined and imprisoned.

All moneys derived from the sale of revenue stamps hereunder shall be paid into the State Department of Agriculture for the enforcement of this section. (1935, c. 328; 1965, c. 697.)

Editor's Note.—The 1965 amendment added that portion of the first sentence which follows "milk fat."

Article 25.

North Carolina Egg Law.

§§ **106-240 to 106-245**: Repealed by Session Laws 1955, c. 213, s. 14.

§§ **106-245.1 to 106-245.12**: Repealed by Session Laws 1965, c. 1138, s. 3.

Article 25A.

North Carolina Egg Law.

§ **106-245.13. Short title; scope; rule of construction.**—This article is named and may be cited as the North Carolina Egg Law and relates to eggs sold in the State of North Carolina. Words used in the singular form in this article shall include the plural, and vice versa as the cause may require. (1965, c. 1138, s. 1.)

Editor's Note. — The act inserting this article repealed former article 25, which was also entitled "North Carolina Egg Law." Where former provisions were similar to the new provisions, the historical citations to the repealed sections have been added to the new sections.

§ **106-245.14. Definitions.** — The following words, terms, and phrases shall be construed for the purpose of this article as follows:

(1) "Authorized representative" means the Commissioner or any duly authorized agent or employee who is assigned to carry out the provisions of this article.

(2) "Candling and grading" means selecting eggs as to their conformity to the standards of quality and size or weight class preparatory to marketing them as a specific grade and size or weight class.

(3) "Commissioner" means the North Carolina Commissioner of Agriculture.

(4) "Consumer" means any person who purchases eggs for his or her use or his or her own family use or consumption and not for resale.

(5) "Container" means any box, case, basket, carton, sack, bag, or other receptacle containing eggs. "Subcontainer" means any container used within another container.

(6) "Distributor" means any person, producer, firm or corporation offering for sale or distributing eggs in the State to a retailer, cafe, restaurant, or any other establishment offering for sale to consumers, including but not limited to institutional consumers as defined in this article. Distributors also shall include any person, producer, firm or corporation distributing eggs to his or its own retail outlets or stores but shall not include any person, firm or corporation engaged only to haul or transport eggs.

(7) "Eggs" means product of a domesticated chicken in the shell or as further processed egg products.

(8) "Facilities" means any room, compartment, refrigerator or vehicle used in handling eggs in any manner.

(9) "Grades" shall mean and include specifications defining the limit of variation in quality of two or more eggs.

(10) "Institutional consumer" means a restaurant, hotel, licensed boarding house, commercial bakery or any other institution in which eggs are prepared as food for use by its patrons, residents or patients.

(11) "Law" means the provisions of this article and all rules and regulations issued hereunder.

(12) "Lots" means a physical grouping of eggs or containers with eggs therein, as determined by the North Carolina Department of Agriculture.

(13) "Marketing of eggs" or "market" means the sale, offer for sale, gift, barter, exchange, advertising, branding, marking, labeling, grading, or other preparatory operation or distribution in any manner of eggs or containers of eggs as defined in this article.

(14) "Packer" means any person, that is engaged in grading, shell treating or packing eggs for sale to consumers, direct or through distribution outlets of stores.

(15) "Person" means and includes any individual, producer, firm, partnership, exchange, association, trustee, receiver, corporation, or any other business organization and any member, officer, or employee thereof.

(16) "Retailer" means any person who markets eggs to consumers.

(17) "Size or weight class" means a classification of eggs based on weight at the rate per dozen.

(18) "Standards for quality" means specifications of the physical characteristics of any or all of the component parts or the individual egg. (1965, c. 1138, § 1.)

§ **106-245.15. Designation of grade and class on containers required; conformity with designation; exemption.**—No person shall market to consumers, institutional consumers or retailers or expose for that purpose any eggs unless there is clearly designated therewith on the container the grade and size or weight class established in accordance with the provisions of this article and such eggs shall conform to the designated grade and size or weight class, (except when sold on contract to a U.S. governmental agency): Provided, however, a producer marketing eggs of his own production shall be exempt from this section when such marketing occurs on the premises where the eggs are produced, or when sales do not exceed 60 dozen per week. (1955, c. 213, s. 7; 1965, c. 1138, s. 1.)

§ **106-245.16. Establishing standards, grades and weight classes.**—The Board of Agriculture shall establish and promulgate such standards of quality, grades and weight classes for eggs to be sold or offered for sale in this State as will promote honest and fair dealings in the interest of the poultry industry and the consumer. Such standards, grades and weight classes may be altered or modified by the Board whenever it deems it necessary. (1955, c. 213, s. 9; 1965, c. 1138, s. 1.)

§ **106-245.17. Stop-sale orders.**—If an authorized representative of the North Carolina Department of Agriculture shall determine, after inspection, that any lot of eggs is in violation of this article, he may issue a "stop-sale order" as to such lot or lots of eggs and forthwith notify the owner or custodian of such eggs. Such order shall specify the reason for its issuance. A stop-sale order shall prohibit the further marketing of the eggs subject to it until such eggs are released by the State agency. (1965, c. 1138, s. 1.)

§ **106-245.18. Container labeling.**—(a) Any container or subcontainer in which eggs are marketed to consumers shall bear on the outside portion of the container, but not be limited to, the following:

(1) The applicable consumer grade provided for in this article.
(2) The applicable size or weight class provided for in this article.
(3) The word "eggs."
(4) The numerical count of the contents.
(5) The name and address of the packer or distributor. Words and numerals used to designate the grade and size shall be in clearly legible bold-faced type at least ⅜ inch in height. Any person intending to reuse a container shall obscure any inappropriate labeling thereon and relabel the container in accordance with this section prior to refilling the container with eggs. In any case, the address of the packer or distributor shall be shown in letters not exceeding ⅜ inch in height.

(b) The term "fresh" may only be applied to eggs conforming to the specifications for Grade A or better. No other descriptive term other than applicable grade and size may be applied. (1965, c. 1138, s. 1.)

§ **106-245.19. Invoices.**—(a) Any person, except a producer marketing eggs to another person for candling and grading, when marketing eggs to a retailer, institutional consumer, or other person shall furnish to the purchaser at the time of delivery an invoice showing date of sale, name and address of the seller, name of purchaser, quantity, grade and size-weight classification.

(b) A copy of such invoice shall be kept on file by both the person selling and the purchaser at their respective places of business for a period of at least 30 days. (1955, c. 213, s. 7; 1965, c. 1138, s. 1.)

§ **106-245.20. Advertisements.**—No person shall advertise eggs for sale at a given price unless the unabbreviated grade or quality and size-weight are conspicuously designated in block letters at least half as high as the tallest letter in the word "eggs" or the tallest figure in the price, whichever is larger. (1955, c. 213, s. 7; 1965, c. 1138, s. 1.)

§ **106-245.21. Rules and regulations.**—The North Carolina Board of Agriculture is authorized to make and amend, from time to time, such rules and regulations as may be necessary to administer and enforce the provisions of this article. Such rules and regulations shall be published and copies thereof made available to interested parties upon request therefor. (1955, c. 213, s. 8; 1965, c. 1138, s. 1.)

§ **106-245.22. Sanitation; exemption.**—(a) Any person engaged in the marketing of or the processing of eggs for marketing shall, in addition to maintaining egg handling facilities in a manner commensurate with laws governing food establishments keep the eggs in a proper environment, in accordance with regulations promulgated by the North Carolina Board of Agriculture, to maintain quality. In addition, any container, including the packaging material therein, when used for the marketing of eggs shall be clean, unbroken and free from foreign odor. In all instances eggs shall, so far as possible and by use of all reasonable means, be protected from being soiled or dirtied by foreign matter. When cleaning is necessary a sanitary method approved by the Commissioner shall be employed.

(b) Provided, however, that producers selling eggs of their own production are exempt from this section, when marketing occurs on the premises of production as set forth in the proviso under § 106-245.15. (1965, c. 1138, s. 1.)

§ **106-245.23. Power of Commissioner.**—The Commissioner, or his authorized agents or representatives, may enter, during the regular business hours, any establishment or facility where eggs are bought, stored, offered for sale, or processed, in order to inspect and examine eggs, egg containers, and the premises, and to examine the records of such establishments or facilities relating thereto. (1955, c. 213, s. 10; 1965, c. 1138, s. 1.)

§ **106-245.24. Penalties for violations; enjoining violations; venue.**—(a) Any person who violates any provision of this article shall be guilty of a misdemeanor, punishable by a fine of not less than twenty-five dollars ($25.00) and not more than two hundred dollars ($200.00), or imprisonment for not more than 30 days, or both.

(b) In addition to the criminal penalties provided for above, the Commissioner of Agriculture may apply by equity to a court of competent jurisdiction, and such court shall have jurisdiction and for cause shown to grant temporary or permanent injunction, or both, restraining any person from violating, or continuing to violate any provisions of this article.

(c) Any proceeding for a violation of this article may be brought in the county where the violator resides, has a place of business or principal office or where the act or omission or part thereof, complained of occurred. (1955, c. 213, s. 12; 1965, c. 1138, s. 1.)

§ **106-245.25. Warnings in lieu of criminal prosecutions.**—Nothing in this article shall be construed as requiring the Commissioner to report for criminal prosecution violations of this article whenever he believes that the public interest will be adequately served and compliance with the article obtained by a suitable written notice or warning. (1965, c. 1138, s. 1.)

§ **106-245.26. Remedies cumulative.**—Each remedy provided in this article shall be in addition to and not exclusive of any other remedy provided for in this article. (1965, c. 1138, s. 1.)

§ **106-245.27. Persons punishable as principals.**—(a) Whoever commits any act prohibited by any section of this article or aids, abets, induces, or procures its commission, is punishable as a principal.

(b) Whoever causes an act to be done which if directly performed by him or another would be a violation of the provisions of this article, is punishable as a principal. (1965, c. 1138, s. 1.)

§ **106-245.28. Act of agent as that of principal.**—In construing and enforcing the provisions of this article, the act, omission, or failure, of any agent, officer or other person acting for or employed by an individual, association, partnership, corporation, or firm, within the scope of his employment or office shall be deemed to be the act, omission, or failure to the individual, association, partnership, corporation, or firm as well as that of the person. (1965, c. 1138, s. 1.)

Article 26.

Inspection of Ice Cream Plants, Creameries, and Cheese Factories.

§ **106-246. Cleanliness and sanitation required; washrooms and toilets, living and sleeping rooms; animals.**—For the protection of the health of the people of the State, all places where ice cream, milk shakes, milk sherbet, sherbet, water ices and other similar frozen or semi-frozen food products are made for sale, all creameries, butter and cheese factories, when in operation, shall be kept clean and in a sanitary condition. The floors, walls, and ceilings of all work rooms where the products of plants named herein are made, mixed, stored or handled shall be such that same can be kept in a clean and sanitary condition. All windows, doors, and other openings shall be effectively screened during fly season. Suitable washrooms shall be maintained, and if a toilet is attached, it shall be of sanitary construction and kept in a sanitary condition. No person shall be allowed to live or sleep in such factory unless rooms so occupied are separate and apart from the work or storage rooms. No horses, cows, or other animal shall be kept in such factories or close enough to contaminate products of same unless separated by impenetrable wall without doors, windows or other openings. (1921, c. 169, s. 1; C. S., s. 7251(a); 1933, c. 431, s. 1; 1959, c. 707, s. 1.)

§ **106-247. Cleaning and sterilization of vessels and utensils.**—Suitable means or appliances shall be provided for the proper cleaning or sterilizing of freezers, vats, mixing cans or tanks, conveyors, and all utensils, tools and implements used in making or handling cream, ice cream, butter or cheese and all such apparatus shall be thoroughly cleaned as promptly after use as practicable. (1921, c. 169, s. 2; C. S., s. 7251 (b).)

§ **106-248. Purity of products.**—All cream, ice cream, butter, cheese or other product produced in places named herein shall be pure, wholesome and not deleterious to health, and shall comply with the standards of purity, sanitation, and rules and regulations of the Board of Agriculture provided for in § 106-253; and whole milk, sweet cream, ice cream mix, and other mixes shipped into this State from other states and used in the manufacture of frozen or semi-frozen dairy products processed or sold in this State shall meet the same requirements and be subject to the same regulations and shall carry a tag or label showing name of product, name and address of processor and date of pasteurization. (1921, c. 169, s. 3; C. S., s. 7251(c); 1933, c. 431, s. 2; 1959, c. 707, s. 2.)

§ **106-249. Receivers of products to clean utensils before return.**—Every person, company, or corporation who shall receive milk, cream, or ice cream which is delivered in cans, bottles, or other receptacles, shall thoroughly clean same as soon as practicable after the contents are removed and before the said receptacles are returned to shipper or person from whom the same was received or before such receptacles are delivered to any carrier to be returned to shipper. (1921, c. 169, s. 4; C. S., s. 7251(d).)

§ **106-250. Correct tests of butterfat; tests by Board of Agriculture.**—Creameries and factories that purchase milk and cream from producers of same on a butterfat basis, and pay for same on their own test, shall make and pay on correct test, and any failure to do so shall constitute a violation of this article. The Board of Agriculture under regulations provided for in § 106-253, shall have such test made of milk and cream sold to factories named herein that will show if dishonest tests and practices are used by the purchasers of such products. (1921, c. 169, s. 5; C. S., s. 7251 (e).)

§ **106-251. Department of Agriculture to enforce law; examinations.**—It shall be the duty of the Department of Agriculture to enforce this article, and the Board of Agriculture shall cause to be made by the experts of the Department such examinations of plants and products named herein as are necessary to insure the compliance with the provisions of this article. For the purpose of inspection, the authorized experts of the Department shall have authority, during business hours, to enter all plants or storage rooms where cream, ice cream, butter, or cheese or ingredients used in the same are made, stored, or kept, and any person who shall hinder, prevent, or attempt to prevent any duly authorized expert of the Department in the performance of his duty in connection with this article shall be guilty of a violation of this article. (1921, c. 169, s. 6; C. S., s. 7251 (f).)

§ **106-252. Closure of plants for violation of article; certificate to solicitor of district.**—If it shall appear from the examinations that any provision of this article has been violated, the Commissioner of Agriculture shall have authority to order the plant or place of manufacture closed until the law is complied with. If the owner or operator of the place refuses or fails to comply with the order, law or regulations, the Commissioner shall then certify the facts in the case to the solicitor in the district in which the violation was committed. (1921, c. 169, s. 7; C. S., s. 7251 (g).)

§ **106-253. Standards of purity and sanitation; regulating trade or brand names of frozen or semi-frozen desserts.**—The Board of Agriculture is authorized to make such definitions and to establish such standards of purity for products and sanitation for plants or places of manufacture named herein with such regulations, not in conflict with this article, as shall be necessary to make provisions of this article effective and insure the proper enforcement of same, and the violation of said standards of purity or regulations shall be deemed to be a violation of this article. It shall be unlawful for any person, firm or corporation to use the words "cream," "milk," or "ice cream," or either of them, or any similar sounding word or terms, as a part of or in connection with any product, trade name or brand of any frozen or semi-frozen dessert manufactured, sold or offered for sale and not in fact made from dairy products under and in accordance with regulations, definitions or standards approved or promulgated by the Board of Agriculture. (1921, c. 169, s. 8; C. S., s. 7251(h); 1933, c. 431, s. 3; 1945, c. 846; 1959, c. 707, s. 3.)

§ **106-254. Inspection fees; wholesalers; retailers and cheese factories.**—For the purpose of defraying the expenses incurred in the enforcement of this article, the owner, proprietor or operator of each ice cream factory where ice cream, milk shakes, milk sherbet, sherbet, water ices, mixes for frozen or semi-frozen desserts and other similar frozen or semi-frozen food products are made or stored, or any cheese factory or butter-processing plant that disposes of its products at wholesale to retail dealers for resale in this State shall pay to the Commissioner of Agriculture each year an inspection fee of twenty dollars ($20.00). Each maker of ice cream, milk shakes, milk sherbet, sherbet, water ices and/or other similar frozen or semi-frozen food products who disposes of his product at retail only, and cheese factories, shall pay to the Commissioner of Agriculture an inspection fee of five dollars ($5.00) each year. The inspection fee of five dollars ($5.00) shall not apply to conventional spindle-type milk-shake mixers, but shall apply to milk-shake dispensing and vending machines, which operate on a continuous or automatic basis. (1921, c. 169, s. 9; C. S., s. 7251(i); 1933, c. 431, s. 4; 1959, c. 707, s. 4; 1961, c. 791.)

§ 106-255. Violation of article a misdemeanor; punishment.—Any person, firm, or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed twenty-five dollars ($25.00) for the first offense, and for each subsequent offense in the discretion of the court. (1921, c. 169, s. 10; C. S., s. 7251(j).)

Article 27.

Records of Purchases of Milk Products.

§ 106-256. Annual reports to Dairy Division by creameries, milk distributing plants, etc.—Every person, firm or corporation owning or operating a milk processing plant, creamery, milk distributing or cream buying station in this State, where milk or cream is received, shall file on or before April first of each year, upon blanks furnished, a report to the Dairy Division of the State Department of Agriculture, showing the amount of milk and cream received by such plants or stations during the calendar year preceding. The said report shall show the amount of butter, cheese, ice cream or other dairy products manufactured. (1939, c. 327, s. 1.)

§ 106-257. Records of purchases of cream.—Records of the purchase of cream shall be kept at each plant or station for a period of six months from the date of purchase, and shall show the date of purchase, the net pounds of cream purchased, the butterfat tests, the price of butterfat, and the amount paid therefor, in such manner as may be required on the report blanks provided. When payment for cream is made in cash, receipts of such payments shall be kept with the records, otherwise canceled checks or facsimile impressions shall be kept as receipts with records. Such records shall be available for inspection by any authorized representative of the Commissioner of Agriculture. (1939, c. 327, s. 2.)

§ 106-258. Individual plant records treated as confidential.—Any individual plant records shall be treated as confidential by anyone handling them and such individual records shall not be published or made accessible to any unauthorized person or representative. (1939, c. 327, s. 3.)

§ 106-259. Failure to comply with provisions of article made misdemeanor.—Any person, firm or corporation owning or operating a creamery, cheese plant, condensed milk plant, ice-cream plant, milk depot, or milk distributing plant, or milk or cream buying station, failing to comply with the provisions of this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court. (1939, c. 327, s. 4.)

Article 28.

Records and Reports of Milk Distributors and Processors.

§ 106-260. "Milk" defined.—Wherever the word "milk" appears hereinafter in this article, it shall be construed to include all whole milk, cream, chocolate milk, buttermilk, skim milk, special milk and all flavored milk, including flavored drinks, skim condensed, whole condensed, dry milks and evaporated. (1941, c. 162, s. 1; 1951, c. 1133, s. 1.)

§ 106-261. Reports to Commissioner of Agriculture as to milk purchased and sold.—Every person, firm or corporation that purchases milk for processing or distribution or sale, or that purchases milk for processing and distribution and sale, in North Carolina shall, not later than the twentieth of each month following the month such business is carried on, furnish information to the Commissioner of Agriculture, upon blanks to be furnished by him which will show a detailed statement of the quantities of the various classifications of milk purchased and the class in which milk was distributed or sold. Such report shall include all milk purchased from producers and other sources, imported, all milk sold to consumers, sold or transferred between plants, distributors, affiliates and subsidiaries, and all milk used in the manufacture of other dairy products; provided, however, that every person, firm or corporation engaged in purchasing milk and/or dairy products as defined in § 106-260, for processing and manufacturing purposes only and who is not engaged in distributing and/or selling milk or milk products in fluid form, shall be required to report only the receipts of such milk or milk products and the quantities of dairy products manufactured. Provided, further, that the provisions of this section shall not apply to retail stores unless the same are owned, controlled or operated by milk processors and/or distributors. (1947, c. 162, s. 2; 1951, c. 1133, s. 2.)

§ **106-262. Powers of Commissioner of Agriculture.**—The Commissioner of Agriculture is hereby authorized and empowered:

(1) To require such reports as will enable him to determine the quantities of milk purchased and the classification in which it was used or disposed;

(2) To designate any area of the State as a natural marketing area for the sale or use of milk or milk products;

(3) To set up classifications for the sale or use of milk or milk products for each marketing area after full, complete and impartial hearing. Due notice of such hearing shall be given.

(4) To make rules and regulations and issue orders necessary to carry out and enforce the provisions of this article, including the supervision of producer bases and other production incentive plans; methods of uniform and equitable payments to all producers selling milk to the same firm, person or corporation; uniform methods of computing weights of milk and/or milk products; and maximum handling and transportation charges for milk sold and/or transferred between plants. (1941, c. 162, s. 3; 1951, c. 1133, s. 3.)

§ **106-263. Distribution of milk in classification higher than that in which purchased.**—It shall be unlawful for any operator of a milk processing plant or any milk distributor, required to make reports under this article, or their affiliates or subsidiaries, to sell, use, transfer, or distribute any milk in a classification higher than the classification in which it was purchased, except in an emergency declared and approved in writing by the local board of health having supervision of operators and distributors on such market for a period of two weeks, and such period may be extended if, in the opinion of the local board of health, an emergency still exists at the end of such two weeks' period. (1941, c. 162, s. 4.)

§ **106-264. Inspections and investigations by Commissioner.**—For the purpose of administering this article the Commissioner of Agriculture or his agent is hereby authorized to enter at all reasonable hours all places where milk is being stored, bottled, or processed, or where milk is being bought, sold, or handled, or where books, papers, records, or documents relating to such transactions are kept, and shall have the power to inspect and copy the same in any place within the State, and may take testimony for the purpose of ascertaining facts which in the judgment of the Commissioner are necessary to administer this article. The Commissioner shall have the power to determine the truth and accuracy of said books, records, papers, documents, accounts, and reports required to be furnished by milk distributors, their affiliates or subsidiaries in accordance with the provisions of this article. (1941, c. 162, s. 5.)

§ 106-265. Failure to file reports, etc., made unlawful.—It shall be unlawful for any person, firm or corporation engaged in the business herein regulated to fail to furnish the information and file the reports required by this article, and each day's failure to furnish the reports required hereunder shall constitute a separate offense. (1941, c. 162, s. 6.)

§ 106-266. Violation made misdemeanor.—Any person, firm, or corporation violating any of the provisions of this article and/or any rule, regulation or order promulgated in accordance with the provisions of this article shall be guilty of a misdemeanor, and shall, upon conviction thereof, be fined not more than one thousand dollars ($1,000.00), or be imprisoned for not more than one year, or both fined and imprisoned in the discretion of the court. (1941, c. 162, s. 7; 1951, c. 1133, s. 4.)

ARTICLE 28A.

Regulation of Milk Brought into North Carolina from Other States.

§ 106-266.1. Requirements to be complied with by out-of-state shippers of milk or cream.—No person, firm, association or corporation shall ship, transport, carry, send or bring into this State any milk or cream for fluid distribution without first having applied for and obtained from the Commissioner of Agriculture of this State a permit authorizing such transaction, shipment or transportation. In order to defray the expenses of the enforcement of this article, the Commissioner of Agriculture shall collect a fee of twenty-five dollars ($25.00) for the issuance of such permit. The Board of Agriculture is authorized and empowered to establish, determine, fix and promulgate rules and regulations containing all necessary definitions, conditions, standards and classifications of the type, kind, quality, conditions of production, sanitary conditions and other reasonable requirements that must be complied with before milk or cream is shipped, transported, carried or brought into this State, including compliance with the Milk Audit Law of this State. Before any person, firm, association or corporation ships, transports, brings, sends or carries any milk or cream into this State, advance notice of such shipment or transportation shall be given to the Commissioner of Agriculture of this State and contain such information as the Board of Agriculture shall prescribe by rules and regulations. The Commissioner of Agriculture is authorized to suspend, immediately upon notice to a permit holder, any permit issued under authority of this section if it is found by him that any of the conditions of the permit or any of the rules, regulations and laws have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Commissioner of Agriculture shall, immediately after prompt hearing and such other examinations or inspections as he deems proper, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended. Any permit issued by the Commissioner of Agriculture under the authority of this section may be revoked after an opportunity for a hearing by the Commissioner of Agriculture, upon the violation by the holder of the permit of any of the terms, conditions, rules and regulations issued and promulgated by authority of this section. All milk or cream shipped, transported, carried, sent or brought into this State shall be sold to, consigned to, delivered to, be transported, sent or carried only to a person, firm, association or corporation or to a milk distributor in this State holding or possessing an unrevoked permit from the Commissioner of Agriculture authorizing the receiving or importation of such milk or cream. All unrevoked permits issued under the authority of this section shall become null and void after the expiration of December 31st of each year.

In order that a sufficient supply of milk or cream shall always be available for the inhabitants of the State the Commissioner of Agriculture may issue to approved permit holders, or to nonpermit holders, temporary emergency permits for limited periods or limited quantities of milk or cream and may restrict such permits to a limited area in accordance with such regulations as the Commissioner of Agriculture may prescribe for each temporary permit. (1949, c. 822.)

§ 106-266.2. Requirements and standards for distributors in this State distributing imported milk or cream.—No person, firm, association or corporation shall import, transport into, receive, bring into or cause to be imported or to be sent into this State from another state for the purpose of sale, for the purpose of offering for sale, for the purpose of distribution any milk or cream unless such person, firm, association or corporation has obtained a permit from the Commissioner of Agriculture for such purpose. All permits issued under the authority of this section shall be issued after the payment of a fee of twenty-five dollars ($25.00) to the Commissioner of Agriculture. The permits issued hereunder shall be conditioned upon compliance by the applicant or holder with the rules and regulations and laws of North Carolina governing milk or cream and such other definitions and standards as may be established and promulgated by the Board of Agriculture. The Commissioner of Agriculture is authorized to suspend, immediately upon due notice, any permit issued under authority of this section if it is found by the Commissioner that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the Commissioner of Agriculture shall, immediately after prompt hearing, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued, or as amended. The permits issued hereunder may be revoked after due notice and an opportunity for hearing by the Commissioner of Agriculture upon a finding at such hearing of any violation of any of the conditions, terms or requirements established and promulgated by the Board of Agriculture or of any of the laws of the State governing milk or cream, including but not by way of limitation, the Milk Audit Law and other dairy laws of the State. It shall be the duty of the Commissioner of Agriculture to issue and enforce a written or printed "stop sale, use or removal" order to the owner or custodian of any quantity of milk or cream imported, transported, or brought into this State and to hold the same at a designated place when the Commissioner of Agriculture finds that said milk or cream does not meet the requirements of the provisions of this article or the rules and regulations promulgated thereunder, until the law has been complied with and said milk or cream is released in writing by the Commissioner of Agriculture or said violation has been otherwise legally disposed of by written authority or by written order by the Commissioner of Agriculture directing the owner or custodian to remove the milk or cream from the State. The Commissioner of Agriculture shall release the milk or cream so withdrawn from the sale when the requirements of the provisions of this article and the rules and regulations promulgated thereunder have been complied with and upon payment by the out-of-state shipper of all costs and expenses incurred in connection with the withdrawal. All unrevoked permits issued under the authority of this section shall become null and void after the expiration of December 31st of each year. All authority vested in the Commissioner of Agriculture by virtue of the provisions of this article may, with like force and effect, be executed by such employees and agents of the Commissioner of Agriculture as may, from time to time, be designated by him for such purpose. The Commissioner of Agriculture or his duly authorized agent shall have free access at all reasonable hours to any dairy, milk processing plant, distributing plant or any establishment, depot, tank, truck or vehicle which contains milk for the purpose of inspecting any milk or cream, containers, or any other establishment or device pertaining to the transportation, the distribution, bottling or storage of milk or cream for the purpose of determining whether any of the provisions of this article or of the rules and regulations promulgated thereunder have been violated, and the Commissioner of Agriculture may secure samples of specimens of any such milk or cream after paying or offering to pay for such sample.

In order that a sufficient supply of milk or cream shall always be available for the inhabitants of the State the Commissioner of Agriculture may issue to permit holders, or nonpermit holders upon payment of a permit fee of twenty-five dollars ($25.00), temporary emergency permits for limited periods or limited quantities of milk or cream and may restrict such permits to a limited area or to a particular city or to a particular market or markets in accordance with such regulations as the Commissioner of Agriculture may prescribe for each temporary permit. (1949, c. 822.)

§ **106-266.3. Power to make rules and regulations.**—The Board of Agriculture is authorized to make such regulations not in conflict with this article as shall be necessary to make the provisions of this article effective and insure the proper enforcement of same, and a violation of such regulations shall be deemed a violation of this article. (1949, c. 822.)

§ **106-266.4. Penalty for violation.**—Any person, firm, association or corporation found guilty by a competent court of violating any of the provisions of this article shall be guilty of a misdemeanor and upon plea of guilty or conviction shall be fined not to exceed fifty dollars ($50.00) for the first offense and for each subsequent offense shall be fined or imprisoned in the discretion of the court. (1949, c. 822.)

§ **106-266.5. Exemption clause.**—The provisions of this article shall not be construed as extending to or applying to evaporated milk, powdered whole milk, powdered skimmed milk, or cream used for manufacturing purposes. Out-of-state dairy farms producing milk for North Carolina plants under a permit from, and in accordance with the local health regulations of the county or city to which milk is being delivered, may be exempted from the provisions of this article at the discretion of the Commissioner of Agriculture. (1949, c. 822.)

Article 28B.

Regulation of Production, Distribution, etc., of Milk and Cream.

§ **106-266.6. Definitions.**—As used in this article, unless otherwise stated and unless the context or subject matter clearly indicates otherwise:

"Affiliate" means any person and/or subsidiary thereof, who has, either directly or indirectly, actual control or legal control over a distributor, whether by stock ownership or any other manner.

"Board" means the local agency authorized by this article to administer the operation of the article in each marketing area operating under the provisions of this article, to be known as the "milk board" of the particular market area in which it functions.

"Books and records" means books, records, accounts, contracts, memoranda, documents, papers, corespondence, or other data, pertaining to the business of the person in question.

"Commission" means the North Carolina Milk Commission created by this article.

"Commissioner" means the North Carolina Commissioner of Agriculture.

"Consumer" means any person, other than a distributor who purchases milk for human consumption.

"Distributor" means any of the following persons engaged in the business of distributing, marketing, or in any manner handling fluid milk, in whole or in part, in fluid form for consumption in the State of North Carolina, but shall not mean any distributor who sells twenty-five (25) gallons or less of milk per day which is produced on his own farm:

(1) Persons, irrespective of whether any such person is a producer:
  a. Who pasteurize or bottle milk or process milk into fluid milk;
  b. Who sell and/or market fluid milk at wholesale or retail:
    1. To hotels, restaurants, stores or other establishments for consumption on the premises,
    2. To stores or other establishments for resale, or
    3. To consumers;
  c. Who operate stores or other establishments for the sale of fluid milk at retail for consumption off the premises.

(2) Persons wherever located or operating, whether within or without the State of North Carolina, who purchase, market or handle milk for resale as fluid milk in the State.

"Health authorities" includes the State Board of Health, the State Department of Agriculture, the Commissioner of Agriculture, and the local health authorities.

"Licensee" means a licensed milk distributor.

"Market" means any city, town, or village of the State, or any two or more cities and/or towns and/or villages and surrounding territory designated by the Commission as a natural marketing area.

"Milk" means the clean lacteal secretion obtained by the complete milking of one or more healthy cows properly fed, housed, and kept; including milk that is produced under strict sanitary conditions, and cooled, pasteurized, standardized or otherwise processed with a view of selling it as fluid milk, cream, buttermilk (either cultured or natural buttermilk, and including cultured whole milk in its several forms) and skimmed milk. Said term excludes the lacteal secretions of one or more dairy cows where the secretion is to be sold for any other purpose.

"Person" means any person, firm, corporation or association.

"Producer" means any person, irrespective of whether any such person is a distributor, who operates to produce milk for sale as fluid milk in the State.

"Producer-distributor" means a distributor who handles milk produced only by himself, or a cooperative group.

"Sanitary regulations" includes all laws and ordinances relating to the production, handling, transportation, distribution and sale of milk and, so far as applicable thereto, the State sanitary code and lawful regulations adopted by the dairy and food divisions, or by the board of health of any county or municipality.

"Subsidiary" means any person or officer over whom or which a distributor or an affiliate of a distributor has, or several distributors have either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner. (1953, c. 1338, s. 1.)

Editor's Note.—For comment on this article, see 31 N.C.L. Rev. 384 (1953).

Quoted in State ex rel. North Carolina Milk Comm'n v. Galloway, 249 N.C. 658, 107 S.E.2d 631 (1959).

§ 106-266.7. Milk Commission created; membership; chairman; compensation; quorum; duties of Commissioner of Agriculture and Director of Agricultural Experiment Station.—(a) There is hereby created a Milk Commission to be designated as the North Carolina Milk Commission, consisting of nine members as follows: One of whom shall be a producer, who is not directly or indirectly engaged in the distribution thereof; one of whom shall be a producer-distributor; two of whom shall be distributors; three of whom shall be representatives of the public interest who are not connected in any manner with the production or distribution of milk; one of whom shall be in the business of retailing packaged milk through a retail grocery establishment, or through a restaurant or through a drugstore retail outlet, or otherwise engaged in the business of retailing packaged milk other than in the processing and distribution of same; and the ninth member shall be the Commissioner of Agriculture serving ex officio, without voting privileges except in cases of tie votes, but his presence and attendance at meetings shall be counted in determining a quorum of the Commission. Except for the Commissioner of Agriculture, all members of the Commission shall be appointed by the Governor. Of the members of the Commission first appointed, the Governor shall designate one for a term of one year; one for a term of two years; one for a term of three years; and three for a term of four years. Thereafter, appointments shall be made for terms of four years.

(b) The Commission shall select one of its members who shall act as chairman and shall provide such administrative personnel as may be necessary to carry out the provisions of this article.

(c) The pay of the members of the Commission shall be set by the Governor and the Council of State.

(d) Five members of the Commission shall constitute a quorum.

(e) The Commissioner of Agriculture and the Director of the Agricultural Experiment Station of North Carolina State University at Raleigh shall provide as far as practical without additional compensation such technical and other services as may be necessary to carry out the provisions of this article.

(f) The Commission shall, subject to the limitations herein contained and the rules and regulations of the Commission, enforce the provisions of this article, but no official act shall be taken, rule or regulation be promulgated, or official order be made or enforced, with respect to the provisions of this article, without the approval of the majority of the members of the Commission. (1953, c. 1338, s. 2; 1955, c. 406, ss. 2, 3; c. 1287, s. 1; 1965, c. 213.)

Editor's Note.—Session Laws 1955, c. 276, s. 1, changed "agricultural experiment station," as used in § 106-15, to read "agricultural research station."

§ **106-266.8. Powers of Commission.**—The Commission is hereby declared to be an instrumentality of the State of North Carolina, vested with power:

(1) To confer with the legally constituted authorities of other states of the United States, with a view of securing a uniformity of milk control, with respect to milk coming into the State of North Carolina and going out of the said State in interstate commerce, with a view of accomplishing the purpose of this article, and to enter into a compact or compacts for such uniform system of milk control.

(2) To investigate all matters pertaining to the production, processing, storage, distribution, and sale of milk for consumption in the State of North Carolina.

(3) To supervise and regulate the transportation, processing, storage, distribution, delivery and sale of milk for consumption; provided that nothing in this article shall be interpreted as giving the Commission any power to limit the quantity of milk that any producer can produce, nor the power to prohibit or restrict the admission of new producers; and provided further that any distributor, having on April 1, 1953, a local health department permit authorizing the selling of dairy products in any county, city and/or town, shall be granted a license by the Commission to continue to operate in said county, city and/or town unless and until the Commission shall suspend or revoke such license upon due notice and after a hearing as authorized by this article.

(4) To act as mediator or arbiter in any controversial issue that may arise among or between milk producers and distributors as between themselves, or that may arise between them as groups.

(5) To cause examination into the business, books, and accounts of any milk producer, association of producers or milk distributors, their affiliates or subsidiaries; to issue subpoenas to milk producers, association of producers, and milk distributors, and require them to

produce their records, books, and accounts; to subpoena any other person from whom information is desired.

(6) To take deposition of witnesses within or without the State. Any member of the Commission or any employee of the Commission, so designated, may administer oaths to witnesses and sign and issue subpoenas.

(7) To hold hearings, make and adopt rules and regulations and/or orders necessary to carry out the purposes of this article. Every rule or order of the Commission shall be filed in the office of the Commissioner and a certified copy sent to the chairman of the board in the marketing area affected by said rule or order. An order applying only to a person or persons named therein shall be served on the person or persons affected. An order, herein required to be served, shall be served by personal delivery of a certified copy, or by mailing a certified copy in a sealed envelope, by certified mail, return receipt requested, with postage prepaid, to each person affected thereby; or in the case of a corporation, to any officer or agent of the corporation upon whom legal processes may be served. The filing in the office of the Commissioner with a certified copy of any rule or order to the chairman of the board in the area affected shall constitute due and sufficient notice to all persons affected by such rule or order.

(8) The operation and effect of any provision of this article conferring a general power upon the Commission shall not be impaired or qualified by the granting to the Commission by this article of a specific power or powers.

(9) The Commission shall not exercise its power in any market until a public hearing has been held for such market, and the Commission determines that it will be to the public interest that it shall so exercise its power in such market. The Commission may, on its own motion, call such a hearing, and shall call such a hearing upon the written application of a producers' association organized under the laws of the State, supplying in the judgment of the Commission, a substantial proportion of the milk consumed in such market, but if no such producers' organization exists on said market, the Commission shall call such hearing upon the written application of producers supplying a substantial proportion of the milk consumed in said market; and shall call such hearing upon the written application of distributors, distributing a substantial proportion of the milk consumed in such market. Such hearing may be held at the time and place and after such notice as the Commission may determine.

The Commission may withdraw the exercise of its powers from any market after a public hearing has been held for such market, and the Commission determines that it will be to the public interest to withdraw the exercise of its powers from such market.

The Commission shall withdraw the exercise of its power from any market upon written application of a majority of the producers in said marketing area.

(10) The Commission, after public hearing and investigation, may fix prices to be paid producers and/or associations of producers by distributors in any market or markets, and may also fix different prices for different grades or classes of milk. Whenever the Commission, after a public hearing and investigation, finds as a fact that an impending marketing situation threatens to disrupt or demoralize the milk industry in any milk-marketing area or areas, it may establish such minimum prices at which milk may be sold in the said area or areas, as it may deem to be necessary to prevent the disruption of such market or markets; and when the Commission finds that such threat no longer

exists it shall withdraw such order or orders: Provided, that this authority shall not apply to the resale of milk when it is purchased for consumption on the premises. In exercising this authority, the Commission may take into consideration the type of container in which the milk is marketed. In determining the reasonableness of prices to be paid or charged in any market or markets for any grade, quantity, or class of milk the Commission shall be guided by the cost of production and distribution, including compliance with all sanitary regulations in force in such market or markets, necessary operating, processing, storage and delivery charges, the prices of other foods and other commodities, and the welfare of the general public. Prices to be paid producers and/or associations of producers by distributors in any market or markets fixed under the authority of this subdivision shall not become effective until the distributors, and producer associations affected thereby are notified in writing by certified or registered mail and until the expiration of thirty (30) days after the mailing of said notices. When a distributor handles or processes milk within the State of North Carolina, the subsequent resale of the milk outside the State shall not affect the right of the Commission to establish and enforce the minimum price to be paid to producers for such milk. In establishing producer prices for milk moving into other states, the Commission shall take into consideration prevailing producer prices established by state or federal milk control agencies operating in such other states.

(11) The Commission may require all distributors in any market designated by the Commission to be licensed by the Commission for the purpose of carrying out the provisions of this article. One who purchases milk from a licensed distributor for the purpose of retail sales shall not be required to be licensed hereunder. The Commission may decline to grant a license, or may suspend or revoke a license already granted upon due notice and after a hearing whenever said applicant or licensee shall have violated or failed to comply with the requirements of this article 28B, or upon any of the following grounds:

a. Where the distributor has failed to account and make payment for any milk purchased or received on consignment or otherwise from a producer or association of producers, or has, if a subdistributor, failed to account and make payment for any milk purchased or received on consignment or otherwise from a distributor; provided, however, that if it be shown there was reasonable cause for any such failure to account and make payment, and that such accounting and payment can and will be made promptly, the Commission shall not suspend or revoke a license solely for such failure until a reasonable opportunity has been afforded to make such accounting and payment.

b. Where the applicant or distributor has made a general assignment for the benefit of creditors, or has been adjudged a bankrupt, or there has been entered against him a judgment upon which an execution remains wholly or partly unsatisfied, or where it is shown that the applicant or distributor has insufficient financial responsibility, personnel or equipment properly to conduct the milk business.

c. Where the applicant or distributor has engaged in a course of action such as to satisfy the Commission of an intent on his part to deceive or defraud customers, producers or consumers.

d. Where the applicant or distributor has failed to maintain such records as are required by the rules and regulations of the Commission or has failed to furnish the statements or information required by the Commission under this article 28B or has kept false records or furnished false statements with respect to such information.

e. Where the applicant or distributor has rejected, without reasonable cause, any milk purchased from a producer, or has refused to accept, without either reasonable cause or reasonable advance notice, milk delivered by or on behalf of a producer in ordinary continuance of a previous course of dealing, except when the contract has been lawfully terminated.

In any case where the Commission shall suspend a license, the Commission may, in its discretion, accept from the licensee an offer in compromise of not less than fifty dollars ($50.00) and not more than one thousand dollars ($1,000.00) as a penalty in lieu of such suspension, and thereupon rescind the suspension. All receipts from such penalties shall be paid by the Commission to the State Treasurer for disposition in the same manner as assessments, as provided by G.S. 106-266.12. The Commission may classify licenses, and may issue licenses to distributors to process or store or sell milk to a particular city or village or to a market or markets within the State of North Carolina.

(12) Any member of the Commission, or any person designated for the purpose, shall have access to, and may enter at all reasonable hours, all places where milk is processed, stored, bottled or manufactured into food products. Any member of the Commission or designated employee shall have the power to inspect and copy books and records in any place within the State for the purpose of ascertaining facts to enable the Commission to administer this article. The Commission may combine such information for any market or markets and make it public.

(13) The Commission may define after a public hearing what shall constitute a natural market area and define and fix limits of the milk shed or territorial area within which milk shall be produced to supply any such market area: Provided, that producers, producer-distributors or their successors now shipping milk to any market may continue to do so until they voluntarily discontinue shipping to the designated milk market.

(14) The Commission may delegate such of its powers given it by this article as it sees fit to the milk board in any particular market area, for the purpose of carrying out the provisions of this article within said market area.

(15) Each licensee shall from time to time, as required by the Commission, submit verified reports containing such information as the Commission may require. (1953, c. 1338, s. 3; 1955, c. 1287, s. 2; 1959, c. 1292; 1963, c. 797, ss. 1-3; 1965, c. 936, s. 1.)

Editor's Note. — The 1963 amendment substituted "certified mail" for "registered mail" near the middle of subdivision (7), added the fifth sentence of subdivision (10) and rewrote subdivision (11).

The 1965 amendment added the last two sentences in subdivision (10).

Section Is Constitutional.—This section, conferring upon the Milk Commission power to fix prices in respect to milk and its products in intrastate business, prescribes standards for the guidance of the Commission and leaves to the Commission only its proper administrative function. It does not violate N.C. Const., Art. I, §§ 17 and 37, nor the Fourteenth Amendment to the federal Constitution. State ex rel. North Carolina Milk Comm'n v. Galloway, 249 N.C. 658, 107 S.E.2d 631 (1959).

Regulation and Fixing of Transportation Rates.—In view of the very broad powers conferred upon the Milk Commission by subdivision (7) of this section to hold hearings, make and adopt rules and regulations and orders necessary to carry out the purposes of this act regulating the producing, etc., of milk, the Milk Commission, and the superior court on appeal, have the power, fairly implied from the language of the act and essential to putting into effect its declared purposes and objects, to regulate and to fix transportation rates for distributors in North Carolina hauling milk of their producers in North Carolina to their processing plant in North Carolina—all intrastate business—and sufficient standards for their guidance in regulating and fixing such hauling prices are to be fairly implied from subdivision (10) of this section. State ex rel. North Carolina Milk Comm'n v. Galloway, 249 N.C. 658, 107 S.E.2d 631 (1959).

An order of the Milk Commission pursuant to this section prescribing a uniform hauling charge per cwt. upon all producers delivering milk to a certain distributor, regardless of the distance or route, is not arbitrary or discriminatory and is relevant to the legislative purpose of the Milk Commission Act. It does not deny a producer the equal protection of the laws or deprive him of property without due process of law, even though he is subject under the regulation to a higher charge than he was under a former system, and does not violate N.C. Const., Art. I, §§ 17 and 37, nor the Fourteenth Amendment to the federal Constitution. State ex rel. North Carolina Milk Comm'n v. Galloway, 249 N.C. 658, 107 S.E.2d 631 (1959).

§ 106-266.9. Distributors to be licensed; prices and practices of distributors regulated.—No distributor in a market in which the provisions of this article are in effect shall buy milk from producers, or others, for sale within the State, or sell or distribute milk within the State, unless such distributor is duly licensed under the provisions of this article. It shall be unlawful for a distributor to buy from or sell milk to a distributor who is not licensed as required by this article. It shall be unlawful for any distributor to deal in, or handle milk if such distributor has reason to believe that the milk has been previously dealt in, or handled, in violation of the terms and provisions of this article. No distributor shall violate the prices as established by or filed with the Commission or offer any discounts or rebates without authority from the Commission; and the Commission may prohibit such practices as it may deem to be contrary to the welfare of the public and the dairy industry, such as the use of special prices or special inducements in any form or any unfair trade practices in order to vary from the established prices. The Commission may require each distributor to file with the Commission one complete schedule of his wholesale and retail prices for each marketing area and may require each distributor to charge his posted prices for all sales and to give ten days' notice by certified mail to the Commission and every licensed distributor in each marketing area affected prior to the effective date of any changes in said posted prices. The requirements as to filing price schedules shall not apply to retail stores the principal business of which is selling other than dairy products and which do not maintain or control directly or indirectly a milk processing plant. The Commission may prohibit a distributor from selling or offering for sale milk in any market or county at prices less than the prices filed for the market or county in which such distributor's processing or bottling plant is located, except in such cases as such sales may be made at a lower price or prices in good faith to meet competition. (1953, c. 1338, s. 4; 1955, c. 406, s. 4; 1963, c. 797, ss. 2, 4, 4½.)

Editor's Note.—The 1963 amendment inserted the words "or filed with" near the beginning of the fourth sentence, substituted "certified mail" for "registered mail" in the fifth sentence and added at the end of the sixth sentence the words "and which do not maintain or control directly or indirectly a milk processing plant."

§ 106-266.10. Application for distributor's license. — An application to the Commission for a license to operate as a distributor shall be made by mail or otherwise within thirty days after the provisions of this article become effective in a market, and as to any distributor thereafter beginning business, before such distributor shall begin such business therein. The application shall be made on blanks furnished by the Commission for that purpose. (1953, c. 1338, s. 5.)

§ 106-266.11. Annual budget of Commission; collection of monthly assessments from local milk boards.—The Commission shall prepare an annual budget and shall collect the sums of money required for this budget from the local milk boards in the form of monthly assessments, and the local milk boards shall pay the assessments so levied. The assessments so levied shall not exceed four cents (4c) per hundred pounds of milk handled in each market in which the provisions of this article are in operation. The assessments herein provided for are the identical (not additional) assessments permitted by § 106-266.14. (1953, c. 1338, s. 6.)

§ 106-266.12. Milk Commission Account; deductions by distributor from funds owed to producer.—All receipts from assessments collected under this article shall be paid by the Commission to the State Treasurer and shall be placed by the State Treasurer in a general fund to the credit of an account to be known as the "Milk Commission Account" and such an amount as may be necessary, and no more, is hereby appropriated out of this Milk Commission Account, for the payment of all expenses incurred by the Commission in administering and enforcing this article. The Commission shall require a distributor to make such deductions from funds owed to a producer as authorized by the producer. (1953, c. 1338, s. 7.)

Cited in Carolina Milk Producers Co-op., Inc. v. Melville Dairy, Inc., 255 N.C. 1, 120 S.E.2d 548 (1961).

§ 106-266.13. Local milk boards.—(a) Members.—For the purpose of securing the benefits of this article, in any market area, the producers and distributors and producer-distributors in that market area shall establish a milk board of five members to carry out the provisions of this article in conjunction with the Commission. Each board shall be composed of two producers supplying milk to the market, one of whom shall be named by the producers operating in the market and one by the Commission. In the markets where the producers' association handles the selling of fifty percent (50%) or more of the milk, the association shall have the right to name both producer representatives on the milk board; and two representatives of the distributors operating in the market shall be named by the Commission. In markets where producer-distributors handle fifty percent (50%) or more of the milk used in the market, the Commission shall determine the representation of the producers, the producer-distributors and the distributors on the milk board on a basis fair to all parties.

The Commission shall appoint the fifth member of the milk board to represent the consumers and the public interest, who shall serve as chairman of the board. The representative of the consumer and the public interest shall have no connection financially or otherwise with the production or distribution of milk or products derived therefrom.

(b) Powers.—The milk board shall perform such functions as the Commission shall delegate to it. (1953, c. 1338, s. 8.)

§ 106-266.14. Assessments to meet expenses of carrying out article.—The expenses, including salaries and/or per diem found necessary to properly carry out the provisions of this article shall be met by an assessment or assessments of not over two cents (2c) per hundred pounds of milk and/or cream (converted to terms of milk of four percent (4%) of butterfat) handled by distributors and not over two cents (2c) per hundred pounds of milk and/or cream (converted to terms of milk of four percent (4%) of butterfat) sold by producers. All assessments shall be paid in monthly or semimonthly installments, at the time that distributors pay producers for the milk and after the original assessment is so paid, no additional assessment shall be levied for the purposes of this article. Assessments shall be made for such funds as are found necessary to carry out the provisions of this article, but no more. (1953, c. 1338, s. 9.)

§ **106-266.15. Injunctive relief.**—In the event of violation of any provisions of this article, or order promulgated under the provisions thereof, in addition to any other remedy, the Commission may apply to any court of record in the State of North Carolina for relief by injunction, if necessary, to protect the public interest without being compelled to allege or prove that any adequate remedy at law does not exist. (1953, c. 1338, s. 10.)

Stated in State ex rel. North Carolina Milk Comm'n v. Dagenhardt, 261 N.C. 281, 134 S.E.2d 361 (1964).

§ **106-266.16. Penalties.**—Any person violating any provisions of this article, or order promulgated under the provisions thereof, or of any license issued by the Commission shall be guilty of a misdemeanor and may be prosecuted and punished therefor, and upon conviction, shall be punished by a fine of not less than twenty-five dollars ($25.00) and not more than one hundred dollars ($100.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than one year, or by both fine and imprisonment, and each day during which such violation shall continue shall be deemed a separate violation. Prosecutions for violations of this article shall be instituted by the Attorney General or otherwise, in any county or city of the State of North Carolina in which such violations occur. (1953, c. 1338, s. 11.)

Stated in State ex rel. North Carolina Milk Comm'n v. Dagenhardt, 261 N.C. 281, 134 S.E.2d 361 (1964).

§ **106-266.17. Appeals.**—Any person or persons aggrieved by an order of the Commission refusing a license, to reissue or revoke or suspend a license, to a distributor or producer-distributor or to transfer a license from one person to another, and any order of the Commission applying only to a person or persons, and not otherwise specifically provided for, may be reviewed upon appeal to the superior court. Any person or persons aggrieved by an order of the Commission fixing, revising or amending the price at or the terms upon which milk may be bought and sold, or any other order, action, rule or regulation of the Commission, may, within forty (40) days after the effective date of such action, rule, regulation or order, appeal therefrom to the superior court. No such appeal shall, in either case, act as a supersedeas except on a special order of the superior court allowing a supersedeas. Before any such person, or persons, shall be allowed to appeal, he shall file written notice of appeal with the Commission and within ten (10) days after the receipt of said written notice of appeal it shall be the duty of the Commission to certify a complete record of its proceedings with all papers or evidence to the clerk of the superior court of the county in which the appellant resides or to the clerk of the superior court of a county in which the violation occurs. The cause shall be entitled "State of North Carolina on Relation of the North Carolina Milk Commission against (here insert name of appellant)," and said cause shall be placed on the civil issue docket of the superior court of such county and shall be heard de novo under the same rules and regulations as are prescribed for the trial of other civil causes. The Commission shall be deemed to be a party plaintiff on such appeal and at its request may present its contentions, make arguments, and take any other legal steps that a party to a civil action may take in the superior court, including the right to appeal to the Supreme Court of North Carolina. (1953, c. 1338, s. 12.)

A sedulous protection against abuse of power by the Milk Commission is provided in this section, which requires that when an appeal is taken from an order of the Milk Commission, the proceeding shall be heard de novo in the superior court. State ex rel. North Carolina Milk Comm'n v. Galloway, 249 N.C. 658, 107 S.E.2d 631 (1959).

§ 106-266.18. Saving clause.—No provisions of this article shall apply or be construed to apply to foreign or interstate commerce, except insofar as the same may be effective pursuant to the United States Constitution and to the laws of the United States enacted pursuant thereto. (1953, c. 1338, s. 13.)

§ 106-266.19. Marketing agreements not to be deemed illegal or in restraint of trade; conflicting laws.—The making of marketing agreements between producers' cooperative marketing associations and distributors and producer-distributors under the provisions of this article shall not be deemed a combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily nor shall the marketing contract or agreements between the association and the distributors and producer-distributors, or any agreements authorized in this article, be considered illegal or in restraint of trade. All laws and clauses of laws in conflict with the provisions of this article are hereby repealed to the extent necessary for the full operation of this article. No provisions of this article shall be deemed in conflict with articles 28 and 28A of chapter 106, Volume 3A of the General Statutes. No provisions of this article shall be deemed in conflict with the authority granted to county, city-county and district boards of health by §§ 130-19, 130-20, 130-66, of chapter 130, Volume 3B of the General Statutes, to make and enforce rules and regulations governing milk sanitation or with the authority granted to the State Board of Health by § 130-3 of Volume 3B of the General Statutes, to make sanitary inquiries and investigations. (1953, c. 1338, s. 14.)

Editor's Note.—Chapter 130 of the General Statutes was completely rewritten by Session Laws 1957, c. 1357, s. 1. The authority of local boards of health is now contained in § 130-17. As to sanitary investigations by the State Board of Health, see now § 130-11.

§ 106-266.20. Limitations upon power of Commission.—Nothing in this article shall be interpreted as giving the Commission any power to limit the quantity of milk that any producer can produce, nor the power to prohibit or restrict the admission of new producers, nor the power to restrict the marketing area of any producer. (1953, c. 1338, s. 14½.)

§ 106-266.21. Sale below cost to injure or destroy competition prohibited.—The sale of milk by any distributor or producer-distributor or retailer below cost for the purpose of injuring, harassing or destroying competition is hereby prohibited. At any hearing or trial on a complaint under this section, evidence of sale of milk by a distributor or subdistributor or retailer below cost shall constitute prima facie evidence of the violation or violations alleged, and the burden of rebutting the prima facie case thus made, by showing that the same was justified in that it was not, in fact, made below cost or that it was not for the purpose of injuring, harassing or destroying competition, shall be upon the person charged with a violation of this section. As used herein the term "cost" shall be construed to mean the price paid for Grade A or Class I milk in the area where such sale is made plus a reasonable allocation of processing and marketing expenses. In determining whether any sale has been made in violation of this section, the Commission shall consider all discounts, rebates, gratuities or any other matters which may have the effect of either directly or indirectly reducing the price received by the distributor or producer-distributor or retailer involved. In the absence of specific proof to the contrary by a retailer as evidenced by a reasonable standard or method of accounting regularly employed by such retailer, the "cost" of the milk to the retailer shall be deemed to be the invoice price paid or incurred for the purchase of milk, plus a minimum of seven percent (7%) of the invoice price, computed to the nearest half cent (½¢) per sales unit, this being deemed to be a reasonable allocation of the retailer's expense in marketing its milk. Where a retailer processes its own milk, or purchases its milk from a subsidiary corporation, the term "cost" as used herein shall be deemed to be the prevailing price at which milk is being purchased in that market area by competing retailers, plus a minimum of seven percent (7%) thereof, computed to the nearest half cent (½¢) per sales unit, in the absence of specific proof to the contrary in the manner set out above, both as to all costs involved in processing the milk as well as the cost of doing business by the retailer. The prima facie case of a violation of this section, made by proof of sale below cost, may be rebutted by proof of any of the following facts:

(1) The merchandise was damaged, or
(2) The milk was sold upon the final liquidation of a business, or
(3) The milk was sold to an organized charity or to a relief agency, or
(4) The milk was sold by an officer acting under the direction of any court. (1955, c. 406, s. 1; 1959, c. 1021; 1965, c. 936, s. 2.)

Editor's Note.—The 1965 amendment added the last three sentences.

For comment on this section, particularly as to its constitutionality, see 33 N.C.L. Rev. 524 (1955).

Applied in State ex rel. North Carolina Milk Comm'n v. Dagenhardt, 261 N.C. 281, 134 S.E.2d 361 (1964).

ARTICLE 29.

Inspection, Grading and Testing Milk and Dairy Products.

§ **106-267. Inspection, grading and testing dairy products.** — The State Board of Agriculture shall have full power to make and promulgate rules and regulations for the Department of Agriculture in its inspection and control of the purchase and sale of milk and other dairy products in North Carolina; to make and establish definitions, not inconsistent with the laws pertaining thereto; to qualify and determine the grade and contents of milk and of other dairy products sold in this State; to regulate the manner of testing the same and the handling, treatment and sale of milk and dairy products, and to promulgate such other rules and regulations not inconsistent with the law as may be necessary in connection with the authority hereby given to the Commissioner of Agriculture on this subject. (1933, c. 550, ss. 1-3; 1951, c. 1121, s. 1.)

§ **106-267.1. License required; fees; term of license; examination required.** — Every person who shall test milk or cream in this State by, or sample milk for, the Babcock method or otherwise for the purpose of determining the percentage of butterfat or milk fat contained therein, where such milk or cream is bought and paid for on the basis of the amount of butterfat contained therein, shall first obtain a license from the Commissioner of Agriculture. Any person applying for such license or renewal of license shall make written and signed application on blanks to be furnished by the Commissioner of Agriculture. The granting of a license shall be conditioned upon the passing by the applicant of an examination, to be conducted by or under the direction of the Commissioner of Agriculture. All licenses so issued or renewed shall expire on December 31 of each year, unless sooner revoked, as provided in § 106-267.3. A license fee of two dollars ($2.00) for each license so granted or renewed shall be paid to the Commissioner of Agriculture by the applicant before any license is granted. (1951, c. 1121, s. 1; 1959, c. 707, s. 5.)

106-267.2. Rules and regulations.—The Commissioner of Agriculture shall establish and promulgate rules and regulations not inconsistent with this article that shall govern the granting of licenses under this article and shall estabish and promulgate rules and regulations not inconsistent with this article that shall govern the manner of testing, including, but not in limitation thereof, the taking of samples, location where the testing of said samples shall be made and the length of time samples of milk or cream shall be held after testing. (1951, c. 1121, s. 1.)

§ 106-267.3. Revocation of license; hearing. — The Commissioner of Agriculture shall have power to revoke any license granted under the provisions of this article, upon good and sufficient evidence that the provisions of this article or the rules and regulations of the Commissioner of Agriculture are not being complied with: Provided, that before any license shall be revoked, an opportunity shall be granted the licensee, upon being confronted with the evidence, to show cause why such license should not be revoked. (1951, c. 1121, s. 1.)

§ 106-267.4. Representative average sample; misdemeanor, what deemed.—In taking samples of milk or cream from any milk can, cream can or any container of milk or cream, the contents of such milk can, cream can, or container of milk and cream shall first be thoroughly mixed either by stirring or otherwise, and the sample shall be taken immediately after mixing or by any other method which gives a representative average sample of the contents, and it is hereby made a misdemeanor to take samples by any method or to fraudulently manipulate such samples so as not to give an accurate and representative average sample where milk or cream is bought or sold and where the value of said milk or cream is determined by the butterfat contained therein. (1951, c. 1121, s. 1.)

§ 106-267.5. Standard Babcock testing glassware; scales and weights.—In the use of the Babcock test all persons shall use the "standard Babcock testing glassware, scales, and weights." The term "standard Babcock testing glassware, scales and weights" shall apply to glassware, scales and weights. It shall be unlawful for any person, firm, company, association, corporation or agent thereof to falsely manipulate, under-read or over-read the Babcock test or any other contrivance used for determining the quality of value of milk or cream where the value of said milk or cream is determined by the percentage of butterfat contained in the same or to make a false determination by the Babcock test or otherwise, or to falsify the record of such test or to pay on the basis of any test, measurement or weight except the true test, measurement or weight. (1951, c. 1121, s. 1.)

§ 106-268. Definitions; enforcement of article. — The definitions set forth in this section shall apply to milk, dairy products, ice cream, frozen desserts, frozen confections or any other products which purport to be milk, dairy products or frozen desserts for which a definition and standard of identity has been established and when any of such products heretofore enumerated shall be sold, offered for sale or held with intent to sell by a milk producer, manufacturer or distributor, and insofar as practicable and applicable, the definitions contained in article 12 of chapter 106 of the General Statutes, as amended, shall be effective as to the products enumerated in this article and section.

The term "adulteration" means:

(1) Failure to meet definitions and standards as established by the Board of Agriculture.
(2) If any valuable constituent has been in whole or in part omitted or abstracted therefrom.
(3) If any substance has been substituted wholly or in part thereof.
(4) If it is adjudged to be unfit for human consumption.

The term "misbranded" means:

(1) If its labeling is false or misleading in any particular.
(2) If it is offered for sale under the name of another dairy product or frozen dessert.
(3) If it is sold in package form unless it bears a prominent label containing the name of the defined product, name and address of the producer, processor or distributor and carries an accurate statement of the quantity of contents in terms of weight or measure.

The Department of Agriculture, through its agents or inspectors, shall have free access during business hours to all places of business, buildings, vehicles, cars, storage places, containers and vessels used in the production, testing, processing and distribution of milk, cream, butter, cheese, ice cream, frozen dessert or any dairy product for which standards of purity and of identity have been established, as well as any substance which purports to be milk, dairy products, frozen dessert or confection for which a definition and standard of purity has been established; the Department of Agriculture, acting through its duly authorized agents and inspectors, may open any box, carton, parcel, package or container holding or containing, or supposed to hold or contain any of the above-enumerated dairy products, as well as related products, and may take therefrom samples for analysis, test or inspection. If it appears that any of the provisions of this article or of this section have been violated, or whenever a duly authorized agent of the Department of Agriculture has cause to believe that any milk, cream, butter, cheese, ice cream, frozen dessert or any dairy product for which standards of purity and of identity have been established or any substance which purports to be milk, a dairy product or a frozen dessert for which a definition and standard of identity has been established, is adulterated or misbranded or by reason of contamination with microorganisms has become deleterious to health during production, processing or distribution, and such products, or any of them, are in a stage of production, or are being exposed for sale, or are being held for processing or distribution or such products are being held with intent to sell the same, such agent or inspector is hereby authorized to issue a "stop-sale" order which shall prohibit further sale of any of the products above enumerated or which shall prohibit further processing, production or distribution of any of the products above enumerated. The agent or inspector shall affix to such product a tag or other appropriate marking giving notice that such product is, or is suspected of, being adulterated, misbranded or contaminated and that the same has been detained or embargoed, and warning all persons not to remove or dispose of such product, by sale or otherwise, until permission for removal or disposal is given by such agent or inspector, until the law or regulation has been complied with or said violation has otherwise been legally disposed of. It shall be unlawful for any person to remove or dispose of any embargoed product, by sale or otherwise, without such permission: Provided, that if such adulteration or misbranding can be corrected by proper labeling or processing of the products so that the products meet the definitions and standards of purity and identity, then with the approval of such agent or inspector, sale and removal may be made. Any milk, dairy products or any of the products enumerated in this article or section not in compliance with this article or section shall be subject to seizure upon complaint of the Commissioner of Agriculture, or any of the agents or inspectors of the Department of Agriculture, to a court of competent jurisdiction in the area in which said products are located. In the event the court finds said products, or any of them, to be in violation of this article or of this section, the court may order the condemnation of said products, and the same shall be disposed of in any manner consistent with the rules and regulations of the Board of Agriculture and the laws of the State and in such a manner as to minimize any loss or damage as far as possible: Provided, that in no instance shall the disposition of said products be ordered by the court without first giving the claimant or owner of same an opportunity to apply to the court for the release of said products or for permission to again process or relabel the same so as to bring the product in compliance with this article or section. In the event any "stop-sale" order shall be issued under the provisions of this article or section, the agents, inspectors or representatives of the Department of Agriculture shall release the products, or any of them, so withdrawn from sale when the requirements of the provisions of this article and section have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1951, c. 1121, s. 1.)

§ 106-268.1. Penalties. — Any person, firm or corporation violating any of the provisions of this article, or any of the rules, regulations or standards promulgated hereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one hundred dollars ($100.00) and the cost of prosecution, or by imprisonment in the county jail for a period of not more than two months, or both such fine and imprisonment in the discretion of the court. (1951, c. 1121, s. 1.)

Article 30.

Board of Crop Seed Improvement.

§ 106-269. Creation and purpose.—There is hereby created a Board of Crop Seed Improvement. It shall be the duty and function of this Board, in cooperation with the Agricultural Experiment Station of North Carolina State College of Agriculture and Engineering, and the Seed Testing Division of the North Carolina Department of Agriculture, to foster and promote the development and distribution of pure strains of crop seeds among the farmers of North Carolina. (1929, c. 325, s. 1; 1955, c. 330, s. 1.)

Cross Reference.—For designation of North Carolina State College of Agriculture and Engineering as North Carolina State University at Raleigh, see §§ 116-2, 116-27.

Editor's Note.—Session Laws 1955, c. 276, s. 1, changed "Agricultural Experiment Station," as used in § 106-15, to read "Agricultural Research Station."

§ 106-270. Board membership. — The Board of Crop Seed Improvement shall consist of the Commissioner of Agriculture, the Dean of the School of Agriculture, President of the North Carolina Foundation Seed Producers Incorporated, and the Director of Research of the School of Agriculture of North Carolina State College of Agriculture and Engineering, the Head of the Seed Testing Division of the North Carolina Department of Agriculture, and the President of the North Carolina Crop Improvement Association. (1929, c. 325, s. 2; 1955, c. 330, s. 2.)

Cross Reference. — For designation of North Carolina State College of Agriculture and Engineering as North Carolina State University at Raleigh, see §§ 116-2, 116-27.

§ 106-271. Powers of Board.—The said Board shall have control, management and supervision of the production, distribution and certification of purebred crop seeds under the provisions of this article. (1929, c. 325, s. 3.)

§ 106-272. Cooperation of other departments with Board; rules and regulations; fees for certification.—Insofar as any of the State departments or agencies shall have to do with the testing, development, production, certification and distribution of farm crop seeds, such departments or agencies shall actively cooperate with the said Board in carrying out the purposes of this article. The said Board shall have authority to make, establish and promulgate all needful rules and regulations, including rules and regulations fixing fees for certification and fixing the market price of certified seed, necessary for the proper exercise of the duties conferred upon said Board and for the carrying out the full purposes of this article. (1929, c. 325, s. 4.)

§ 106-273. North Carolina Crop Improvement Association.—For the purpose of carrying out more fully the provisions of this article and of fostering the development, certification and distribution of pure seeds the said Board shall have authority to promote the organization and incorporation of an association of farmers to be known as the North Carolina Crop Improvement Association, which said Association when so organized and incorporated shall, subject to the rules and regulations prescribed by said Board, adopt all necessary rules and regulations and collect from their members such fees as shall be necessary for the proper functioning of such organizations. (1929, c. 325, s. 5.)

§ **106-274. Certification of crop seeds.**—For the purposes of this article the certification of crop seeds hereunder shall be defined to be a guarantee by the North Carolina Crop Improvement Association herein provided for that the said seed conform to the stated origin, adaptation, variety name, variety purity, quality, germination, seed purity, and any other qualification necessary for the determining of the proper quality or value of crop seed. (1929, c. 325, s. 6.)

§ **106-275. False certification of purebred crop seeds made misdemeanor.**—It shall be a misdemeanor, punishable by fine or imprisonment in the discretion of the court, for any person, firm, association, or corporation, selling seeds, tubers, plants, or plant parts in North Carolina, to use any evidence of certification, such as a blue tag or the word "certified" or both, on any package of seed, tubers, plants, or plant parts, nor shall the word "certified" be used in any advertisement of seeds, tubers, plants, or plant parts, unless such commodities used for plant propogation shall have been duly inspected and certified by the agency of certification provided for in this article, or by a similar legally constituted agency of another state or foreign country. (1933, c. 340, s. 1.)

§ **106-276. Supervision of certification of crop seeds.** — Certification of crop seeds shall be subject to the supervision of the Board of Crop Seed Improvement. The North Carolina Crop Improvement Association is recognized as the official agency for seed certification. (1929, c. 325, s. 7; 1955, c. 330, s. 3.)

ARTICLE 31.

North Carolina Seed Law.

§ **106-277. Purpose.**—The purpose of this article is to regulate the labeling, possessing for sale, sale and offering or exposing for sale of agricultural seeds, vegetable seeds and screenings; to prevent misrepresentation thereof; and for other purposes. (1963, c. 1182.)

Editor's Note. — The 1963 amendment rewrote this article, designating the sections therein as §§ 106-277 to 106-277.28. Prior to the amendment this article consisted of §§ 106-277 to 106-284.4.

§ **106-277.1. Short title.**—This article shall be known by the short title of "The North Carolina Seed Law of 1963." (1941, c. 114, s. 1; 1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ **106-277.2. Definitions.**—As used in this article, unless the context clearly requires otherwise:

(1) The term "advertisement" means all representations, other than those required on the label, disseminated in any manner or by any means, relating to seed within the scope of this article.

(2) The term "agricultural seeds" shall include the seed of grass, forage, cereal, fiber crops and any other kinds of seeds commonly recognized within this State as agricultural or field seeds, lawn seeds and mixtures of such seeds, and may include noxious-weed seeds when the Commissioner determines that such seed is being used as agricultural seed.

(3) The term "Board" means the North Carolina Board of Agriculture as established under § 106-2.

(4) The terms "certified seeds," "registered seeds" or "foundation seeds" mean seed that has been produced and labeled in accordance with the procedures and in compliance with the requirements of an official seed certifying agency.

(5) The term "clone" means all the individuals derived by vegetative propagation from a single, original individual.

(6) The term "code designation" means a series of numbers or letters approved by the United States Department of Agriculture and used in lieu of the full name and address of the person who tags or labels seed.

(7) The term "Commissioner" means the Commissioner of Agriculture of North Carolina or his designated agent or agents.

(8) The term "date of test" means the month and year the percentage of germination appearing on the label was obtained by laboratory test.

(9) The term "dealer" or "vendor" shall mean any person, not classified as a grower, who buys, sells or offers for sale any seed for seeding purposes and shall include any person who has seed grown under contract for resale for seeding purposes.

(10) The term "germination" means the percentages by count of seeds under consideration, determined to be capable of producing normal seedlings in a given period of time and under normal conditions.

(11) The term "grower" shall mean any person who produces seed, directly as a landlord, tenant, sharecropper or lessee, which are offered or exposed for sale.

(12) The term "hard seeds" means seeds which, because of hardness or impermeability, do not absorb moisture and germinate but remain hard during the normal period of germination.

(13) The term "hybrid" means the first generation seed of a cross produced by controlling cross-fertilization and combining (i) two or more inbred lines or clones, or (ii) one or more inbred lines or clones with an open-pollinated variety, or (iii) two or more varieties or species, clonal or otherwise, except open-pollinated varieties of normally cross-fertilized species. The second generation or subsequent generation seed from such crosses shall not be designated as hybrids. Hybrid designations shall be treated as variety names.

(14) The term "inbred line" means a relatively stable and pure breeding strain resulting from not less than four successive generations of controlled self-pollination or four successive generations of backcrossing in the case of male sterile lines or their genetic equivalent.

(15) The term "in bulk" refers to loose seed in bins, or open containers, and not to seed in bags or packets.

(16) The term "inert matter" means all matter not seeds, including broken seeds, sterile florets, chaff, fungus bodies, stones and other substances found not to be seed when examined according to procedures prescribed by rules and regulations promulgated pursuant to the provisions of this article.

(17) The term "kind" means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, wheat, striate lespedeza, alfalfa, tall fescue.

(18) The term "labeling" includes all labels and other written, printed or graphic representations in any manner whatsoever accompanying and pertaining to any seed whether in bulk or in containers and includes representations on invoices.

(19) The term "lot" means a definite quantity of seed, identified by a lot number or other identification, which shall be uniform throughout for the factors which appear on the label.

(20) The term "mixture" means seeds consisting of more than one kind or kind and variety, each present in excess of five per centum (5%) of the whole.

(21) The term "North Carolina seed analysis tag" shall mean the tag de-

signed and prescribed by the Commissioner as the official North Carolina seed analysis tag, said tag to be purchased from the Commissioner.

(22) "Noxious-weed seeds" shall be divided into two classes:

- a. "Prohibited noxious-weed seeds" are the seeds of weeds which, when established on the land, are highly destructive and are not controlled in this State by cultural practices commonly used, and shall include any crop seed found to be harmful when fed to poultry or livestock.
- b. "Restricted noxious-weed seeds" are the seeds of weeds which are very objectionable in fields, lawns and gardens in this State and are difficult to control by cultural practices commonly used.

(23) The term "official certifying agency" means an agency authorized or recognized and designated as a certifying agency by the laws of a state, the United States, a province of Canada or the government of a foreign country.

(24) The term "origin" means the state, District of Columbia, Puerto Rico, possession of the United States or the foreign country where the seed was grown.

(25) The term "other crop seeds" means seeds of kinds or varieties of agricultural or vegetable crops other than those shown on the label as the primary kind or kind and variety.

(26) The term "person" shall include any individual, partnership, corporation, company, society or association.

(27) The term "processing" means cleaning, scarifying or blending to obtain uniform quality and other operations which would change the purity or germination of the seed and therefore require retesting to determine the quality of the seed, but does not include operations such as packaging, labeling, blending together of uniform lots of the same kind or kind and variety without cleaning, or preparation of a mixture without cleaning, any of which would not require retesting to determine the quality of the seed.

(28) The term "pure seed" means agricultural or vegetable seeds, exclusive of inert matter, weed seeds and all other seeds distinguishable from the kind or kind and variety being considered when examined according to procedures prescribed by rules and regulations promulgated pursuant to the provisions of this article.

(29) The term "purity" means the name or names of the kind, type or variety and the percentage or percentages thereof, the percentage of other crop seed; the percentage of weed seeds, including noxious-weed seeds; the percentage of inert matter; and the name and rate of occurrence of each noxious-weed seed.

(30) The terms "recognized variety name" and "recognized hybrid designation" mean the name or designation which was first assigned the variety or hybrid by the person who developed it or the person who first introduced it for production or sale after legal acquisition. Such terms shall be used only to designate the varieties or hybrids to which they were first assigned.

(31) The term "screenings" includes seed, inert matter and other materials removed from agricultural or vegetable seed by cleaning or processing.

(32) The term "seed offered for sale" means any seed or grain, whether in bags, packets, bins or other containers, exposed in salesrooms, storerooms, warehouses or other places where seed is sold or delivered for seeding purposes, and shall be subject to the provisions of the seed law, unless clearly labeled "not for sale as seed."

(33) The term "seizure" means a legal process carried out by court order against a definite amount of seed.

(34) The term "stop-sale" means an administrative order provided by law restraining the sale, use, disposition and movement of a definite amount of seed.

(35) The term "treated" means given an application of a substance or subjected to a process designed to reduce, control or repel disease organisms, insects or other pests which attack seeds or seedlings growing therefrom, or to improve the planting value of the seed.

(36) The term "variety" means a subdivision of a kind characterized by growth, plant, fruit, seed or other constant characteristics by which it can be differentiated in successive generations from other sorts of the same kind; for example, Dixie 82 Corn, Knox Wheat, Kobe Striate Lespedeza, Ranger Alfalfa, Kentucky 31 Tall Fescue.

(37) The term "vegetable seeds" shall include the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable seed in this State.

(38) The term "weed seeds" means the seeds, bulblets or tubers of all plants generally recognized as weeds within this State or which may be classified as weed seed by regulations promulgated under this article.

(39) The term "wholesaler" shall mean a dealer engaged in the business of selling seed to retailers or jobbers as well as to consumers. (1941, c. 114, s. 3; 1943, c. 203, s. 1; 1945, c. 828; 1949, c. 725; 1953, c. 856, ss. 1-3; 1963, c. 1182.)

§ 106-277.3. Label or tag requirements generally. — Each container of agricultural and vegetable seeds which is sold, offered or exposed for sale, or transported within or into this State for seeding purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language giving the information required under G.S. 106-277.4 through 106-277.7, which information shall not be modified or denied in the labeling or on another label attached to the container. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182.)

Indictment for Sale of Improperly Labeled Seed.—See same catchline under § 106-277.9.

§ 106-277.4. Labels for treated seeds.—(a) All seeds which are treated, as defined in this article, shall be labeled to show the following information on a separate label, or on the same label as used for other information (purity, germination, etc.) required by this article, or on the container of seed.

(1) A word or statement in type no smaller than eight (8) points indicating that the seed has been treated.

(2) The commonly accepted coined, chemical (generic) or abbreviated chemical name of a substance or a description of any process (other than application of a substance) used in such treatment in type no smaller than eight (8) points.

(3) A caution statement if the substance used in such treatment in the amount remaining with the seed is harmful to humans or other vertebrate animals.

(b) Seed treated with a mercurial or similarly toxic substance, if any amount remains with the seed, shall be labeled to show a statement such as "Poison," "Poison Treated," or "Treated with Poison." The word "Poison" shall be in type no smaller than eight (8) points and shall be in red letters on a distinctly contrasting background. In addition, the label shall show a representation of a skull and crossbones at least twice the size of the type used for the word "Poison" and the statement indicating that the seed has been treated.

(c) Seed treated with other harmful substances (other than mercurials or similarly toxic substances), if the amount remaining with the seed is harmful to humans or other vertebrate animals, shall be labeled to show the word "Caution" in red letters in type no smaller than eight (8) points, followed by the statement "Do not use for food, feed, or oil" in type no smaller than eight (8) points. Seed treated with substances other than mercurials or similarly toxic substance in containers of four (4) ounces or less need not be labeled to show the caution statement.

(d) Seed commingled with treated seed shall be labeled "treated," and the percentage of treated seed and the substance used shall be stated.

(e) If the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective (date of expiration) shall be declared on the label. (1963, c. 1182.)

§ 106-277.5. Labels for agricultural seeds.—Agricultural seeds sold, offered or exposed for sale, or transported for sale within this State shall be labeled to show the following information:

(1) The recognized name of the kind or kind and variety of each agricultural seed component in excess of five percent (5%) of the whole and the percentage by weight of each in the order of its predominance. When more than one component is required to be named, the word "mixture" or "mixed" shall be shown conspicuously on the label.

(2) Lot number or other lot identification.

(3) Net weight.

(4) Origin, if known. If the origin is unknown, the fact shall be stated.

(5) Percentage by weight of inert matter.

(6) Percentage by weight of agricultural seeds and/or vegetable seeds (which shall be designated as "other crop seeds") other than those named on the label. Different varieties of the same kind of seed, when in quantities of less than five percent (5%) will be considered as other crop seed.

(7) Percentage by weight of all weed seeds, including noxious-weed seeds.

(8) For each named agricultural seed:

a. Percentage of germination, exclusive of hard seed.

b. Percentage of hard seeds, if present.

c. The calendar month and year the test was completed to determine such percentages.

In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.

(9) The name and number per pound of each kind of restricted noxious-weed seed present.

(10) Name and address or code designation of the person who labeled said seed or who sells, offers or exposes said seed for sale within this State. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182.)

§ 106-277.6. Labels for vegetable seeds in containers of one pound or less.—Labels for vegetable seeds in containers of one pound or less shall show the following information:

(1) Name of kind and variety of seed.

(2) Origin, for pepper seed in containers of one ounce or more. If unknown, so stated.

(3) The year for which the seed is packed, provided the words "packed for" shall precede the year, or the percentage of germination, month and year tested.

(4) For seeds which germinate less than the standards last established by the Commissioner and approved by the Board of Agriculture under the article:
  a. Percentage of germination, exclusive of hard seed.
  b. Percentage of hard seed, if present.
  c. The calendar month and year the test was completed to determine such percentage.

  In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.

  d. The words "Below Standard" in not less than eight (8) point type.

(5) Name and address of the person who labeled said seed or who sells or exposes said seed for sale within this State. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182.)

§ **106-277.7. Labels for vegetable seeds in containers of more than one pound.**—Vegetable seeds in containers of more than one pound shall be labeled to show the following information:

(1) The name of each kind and variety present in excess of five percent (5%) and the percentage by weight of each in order of its predominance.
(2) Lot number or other lot identification.
(3) Origin, for snap bean and pepper seed only. If unknown, so stated.
(4) For each named vegetable seed:
  a. The percentage of germination exclusive of hard seed.
  b. The percentage of hard seed, if present.
  c. The calendar month and year the test was completed to determine such percentages.

  In addition to the individual percentage statement of germination and hard seed, the total percentage of germination and hard seed may be stated as such, if desired.

(5) Net weight, except when in bulk as defined in this article.
(6) Name and address or code designation of the person who labeled said seed or who sells, offers or exposes said seed for sale within this State.
(7) No tag or label shall be required, unless requested, on seeds sold directly to and in the presence of the purchaser and taken from a bag or container properly labeled. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182.)

§ **106-277.8. Responsibility for presence of labels.**—(a) The immediate vendor of any lot of seed which is sold, offered or exposed for sale shall be responsible for the presence of the labels required to be attached to any lots of seed whether he is offering for sale or selling seed which bears labels of a previous vendor, with or without endorsement, or bears his own label.

(b) The labeler of any original or unbroken lot of seed shall be responsible for the presence of and the information on all labels attached to said lot of seed at the time he sells or offers for sale such lot of seed. (1963, c. 1182.)

§ **106-277.9. Prohibitions.**—It shall be unlawful for any person:

(1) To transport, to offer for transportation, to sell, offer for sale or expose for sale within this State agricultural or vegetable seeds for seeding purposes:
  a. Unless a seed license has been obtained in accordance with the provisions of this article.
  b. Unless the test to determine the percentage of germination re-

quired by §§ 106-277.5 through 106-277.7 shall have been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation.

c. Not labeled in accordance with the provisions of this article or having a false or misleading labeling or claim.

d. Pertaining to which there has been a false or misleading advertisement.

e. Consisting of or containing prohibited noxious-weed seeds.

f. Containing restricted noxious-weed seeds, except as prescribed by rules and regulations promulgated under this article.

g. Containing weed seeds in excess of two percent (2%) by weight unless otherwise provided in rules and regulations promulgated under this article.

h. That have been treated and not labeled as required in this article.

i. Pepper seed in containers holding one ounce or more of seed, not produced in the arid regions of the western United States, unless treated in accordance with a procedure approved by the North Carolina Commissioner of Agriculture and labeled to reflect the procedure used.

j. To which there is affixed names or terms that create a misleading impression as to the kind, kind and variety, history, productivity, quality or origin of the seeds.

k. Represented to be certified, registered or foundation seed unless it has been produced, processed and labeled in accordance with the procedures and in compliance with rules and regulations of an officially recognized certifying agency.

l. Represented to be a hybrid unless such seed conforms to the definition of a hybrid as defined in this article.

m. Unless it conforms to the definition of a "lot."

n. Any variety or hybrid not recorded with the Commissioner as required under rules and regulations promulgated pursuant to this article.

o. Seed of any variety or hybrid that has been found by official variety tests to be inferior, misrepresented or unsuited to conditions within the State. The Commissioner may prohibit the sale of such seed by and with the advice of the director of research of the North Carolina agricultural experiment station.

p. Using a designation on seed tag in lieu of the full name and address of the person who labels or tags seed unless such designation qualifies as a code designation under this article.

(2) To transport, offer for transportation, sell, offer for sale or expose for sale seeds, whole grain and screenings not for seeding purposes unless labeled "not for seeding purposes."

(3) To detach, alter, deface or destroy any label provided for in this article or the rules and regulations promulgated thereunder, or to alter or substitute seed in any manner that defeats the purposes of this article.

(4) To disseminate false or misleading advertisement in any manner concerning agricultural seeds, vegetable seeds or screenings.

(5) To hinder or obstruct in any manner an authorized agent of the Commissioner in the performance of his lawful duties.

(6) To fail to comply with or to supply inaccurate information in reply to a stop-sale order; or to remove tags attached to or to move or dispose of seed or screenings held under a stop-sale order unless authorized by the Commissioner.

(7) To use the name of the Department of Agriculture or the results of tests and inspections made by the Department for advertising purposes.

(8) To use the words "type" or "trace" in lieu of information required by §§ 106-277.4 through 106-277.7.

(9) To label and offer for sale seed under the scope of this article without keeping complete records as specified in § 106-277.12. (1941, c. 114, s. 5; 1943, c. 203, s. 3; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 4; 1957, c. 263, s. 2; 1959, c. 585, s. 2; 1963, c. 1182.)

Editor's Note.—Session Laws 1955, c. 276, s. 1, changed "agricultural experiment station," as used in § 106-15, to read "agricultural research station."

Indictment for Sale of Improperly Labeled Seed.—An indictment under this section charging the sale or offering for sale of seed not labeled in accordance with § 106-277.3 should allege the person to whom defendant sold or offered to sell seed not properly labeled, or that the purchaser was in fact unknown, the particulars in which the label failed to meet the statutory requirements, and where and how the seed was exposed to sale. **State v. Bissette,** 250 N.C. 514, 108 S.E.2d 858 (1959).

An indictment under this section charging that defendant sold or offered for sale tobacco seed having a false or misleading label should allege the person to whom the seed was sold or offered for sale or that the purchaser was in fact unknown, and the intent to defraud. State v. Bissette, 250 N.C. 514, 108 S.E.2d 858 (1959).

§ **106-277.10. Exemptions.**—(a) When the required analysis and other information regarding the seed is present on a seedman's label or tag which bears an official North Carolina seed stamp or is accompanied by the North Carolina seed analysis tag on which is written, stamped or printed the words "See Attached Tag for Seed Analysis," the provisions of §§ 106-277.5 through 106-277.7 shall be deemed to have been complied with.

(b) The official tag or label of the North Carolina Crop Improvement Association shall be considered an "official North Carolina seed analysis tag" when attached to containers of seed duly certified by the said Association or when it refers to an accompanying tag which carries the same information required in §§ 106-277.5 through 106-277.7 and when fees applicable to the North Carolina seed analysis tag have been paid to the Commissioner.

(c) The label requirements for peanuts, cotton and tobacco seed may be limited to:

(1) Lot number or other identification.

(2) Origin, if known. If unknown, so stated.

(3) Commonly accepted name of kind and variety.

(4) Name and number per pound of noxious-weed seeds.

(5) Percentage of germination with month and year of tests.

(6) Name and address of person who labeled said seed or who sells, offers, or exposes said seed for sale.

(d) The provisions of §§ 106-277.3 through 106-277.7 do not apply:

(1) To seed or grain sold or represented to be sold for purposes other than for seeding provided that said seed is labeled "not for seeding purposes" and that the vendor shall make it unmistakably clear to the purchaser of such seed or grain that it is not for seeding purposes.

(2) To seed for processing when consigned to, being transported to or stored in an approved processing establishment, provided that the invoice or labeling accompanying said seed bears the statement "seed for processing" and provided further that other labeling or representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this article.

(3) To seed sold by a farmer grower to a seed dealer or processor, or to seed in storage in or consigned to a seed cleaning or processing plant; provided that any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this article.

(4) To any carrier in respect to any seed or screenings transported or delivered for transportation in the ordinary course of its business as a carrier; provided that such carrier is not engaged in producing, processing or marketing agricultural or vegetable seeds or screenings subject to provisions of this article.

(e) No person shall be subject to the penalties of this article for having sold, offered or exposed for sale in this State any agricultural or vegetable seeds which were incorrectly labeled or represented as to origin, kind or variety when such seeds cannot be identified by examination thereof unless such person has failed to obtain an invoice or grower's declaration giving origin, kind and variety or to take such other precautions as may be necessary to insure the identity to be that stated. (1941, c. 114, s. 4; 1943, c. 203, s. 2; 1945, c. 828; 1949, c. 725; 1959, c. 585, s. 1; 1963, c. 1182.)

§ **106-277.11. Disclaimers, nonwarranties and limited warranties.**—The use of a disclaimer, nonwarranty or limited warranty clause in any invoice, advertising [or] written, printed or graphic matter pertaining to any seed shall not constitute a defense, or be used as a defense in any way, in any prosecution or in any proceedings for confiscation of seeds brought under the provisions of this article or rules and regulations made and promulgated thereunder. (1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ **106-27.12. Records.**—All persons transporting or delivering for transportation, selling, offering or exposing for sale agricultural or vegetable seeds if their name appears on the label shall keep for a period of two (2) years a file sample and a complete record of such seed, including invoices showing lot number, kind and variety, origin, germination, purity, treatment, and the labeling of each lot. The Commissioner or his duly authorized agents shall have the right to inspect such records in connection with the administration of this article at any time during customary business hours. (1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ **106-277.13. Tolerances to be established and used in enforcement.**—Due to variations which may occur between the analyses or tests and likewise betweeen label statements and the results of subsequent analyses and tests, recognized tolerances shall be employed in the enforcement of the provisions of this article, except as otherwise established by appropriate rules and regulations promulgated under authority of this article. (1963, c. 1182.)

§ **106-277.14. Administration.** — The duty of enforcing this article and its rules and regulations and carrying out its provisions and requirements shall be vested in the Commissioner of Agriculture. (1963, c. 1182.)

§ **106-277.15. Rules, regulations and standards.**—The Commissioner of Agriculture, jointly with the Board of Agriculture, after public hearing immediately following ten (10) days public notice may adopt such rules, regulations and standards which they may find to be advisable or necessary to carry out and enforce the purposes and provisions of this article, which shall have the force and effect of law. The Commissioner and Board of Agriculture shall adopt rules, regulations and standards as follows:

(1) Prescribing the methods of sampling, inspecting, analyzing, testing and examining agricultural and vegetable seed, and determining the tolerance to be followed in the administration of this article.

(2) Declaring a list of prohibited and restricted noxious weeds, conforming with the definitions stated in this article, and to add to or subtract therefrom, from time to time, after a public hearing following due public notice.

(3) Declaring the maximum percentage of total weed seed content permitted in agricultural seed.

(4) Declaring the maximum number of "restricted" noxious-weed seeds per pound of agricultural seed permitted to be sold, offered or exposed for sale.
(5) Declaring the minimum percentage of germination permitted for sale as "Agricultural Seeds."
(6) Declaring germination standards for vegetable seeds.
(7) Prescribing the form and use of tags or stamps to be used in labeling seed.
(8) Prescribing such other rules and regulations as may be necessary to secure the efficient enforcement of this article. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ **106-277.16. Seed testing facilities.** — The Commissioner is authorized to establish and maintain or make provision for seed testing facilities, to employ educationally qualified persons, to make or provide for making purity and germination tests of seeds, upon request, for farmers or seedsmen, and to prescribe rules and regulations governing such testing, and to incur such expenses as may be necessary to comply with these provisions. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ **106-277.17. Varieties or hybrids; registration; testing; prohibiting sale if inferior, misrepresented or unsuitable.**—The Commissioner is authorized to require the registration, after field testing for performance and trueness-to-variety, of any variety or hybrid as a prerequisite to sale in this State and to promulgate rules and regulations pertaining to same. The Commissioner is further authorized to prohibit the sale of any variety or hybrid or any kind of crop, by and with the advice of the director of research of the North Carolina agricultural experiment station, that has been found by official field tests to be inferior, misrepresented or unsuited to conditions within the State. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

Editor's Note. — Session Laws 1955, c. 276, s. 1, changed "agricultural experiment station," as used in § 106-15, to read "agricultural research station."

§ **106-277.18. Registration and licensing of dealers.**—It shall be the duty of the Commissioner and he is hereby authorized to require each seed dealer selling, offering or exposing for sale in, or exporting from, this State any agricultural or vegetable seeds for seeding purposes, including packet or package seeds, to register with the Commissioner and to obtain a license annually. (1941, c. 114, s. 7; 1945, c. 828; 1947, c. 928; 1949, c. 725; 1963, c. 1182.)

§ **106-277.19. Revocation or refusal of license for cause; hearing; appeal.**—The Commissioner is authorized to revoke any seed license issued, or to refuse to issue a seed license to any person as hereinafter provided, upon satisfactory proof that said person has repeatedly violated any of the provisions of this article or any of the rules and regulations made and promulgated thereunder; provided that no license shall be revoked or refused until the person shall have first been given an opportunity to appear at a hearing before the Commissioner. Any person who is refused a license, or whose license is revoked by any order of the Commissioner, may appeal within thirty (30) days from said order to the Superior Court of Wake County or the superior court of the county of his residence. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ **106-277.20. Right of entry for purposes of inspection; duty of vendors.**—For the purpose of carrying out this article the Commissioner or his agent is authorized to enter upon any public or private premises during regular business hours in order to have access to seeds subject to this article and the rules and regulations thereunder. It shall be the duty of the dealer or vendor to arrange seed lots so as to be accessible for inspection, and to provide such information and records as may be deemed necessary. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.21. Sampling, inspecting and testing; notice of violations.—It shall be the duty of the Commissioner, who may act through his authorized agents, to sample, inspect, make analysis of and test agricultural and vegetable seeds transported, held in storage, sold, offered or exposed for sale within this State for sowing purposes at such time and place and to such extent as he may deem necessary to determine whether said seeds are in compliance with the provisions of this article, and to notify promptly the person or persons who transported, had in his possession, sold, offered or exposed the seeds for sale of any violation. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.22. Stop-sale orders; penalty covering expenses; appeal. — The Commissioner is authorized to issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of agricultural or vegetable seeds which the Commissioner, or his authorized agent, finds is in violation of any of the provisions of this article or the rules and regulations promulgated thereunder, which order shall prohibit further sale or movement of such seed until such officer has evidence that the law has been complied with and a written release has been issued to the owner or custodian of said seed by the enforcement officer. Any person violating the labeling requirements of the law shall be subject to a penalty covering all costs and expenses incurred in connection with the withdrawal from sale and the release of said seed. With respect to seeds which have been denied sale as provided in this section, the owner, custodian or the person labeling such seeds shall have the right to appeal from such order to the superior court of the county in which the seeds are found, praying for judgment as to the justification of said order and for discharge of such seed from the order prohibiting the same in accordance with the findings of the court; and provided, further, that the provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other sections of this article. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ 106-277.23. Notice of violations; hearings, prosecutions or warnings.—It shall be the duty of the Commissioner to give notice of every violation of the provisions of this article with respect to agricultural or vegetable seeds, mixtures of such seeds, or screenings to the person in whose hands such seeds or screenings are found, and to send copies of such notice to the shipper of such seed or screenings and to the person whose "analysis tag or label" is attached to the container of such seeds or screenings, in which notice he may designate a time and place for a hearing. The person or persons involved shall have the right to introduce evidence either in person or by agent or attorney. If, after hearing, or without such hearing in the event the person fails or refuses to appeal, the Commissioner is of the opinion that the evidence warrants prosecution he may institute proceedings in a court of competent jurisdiction in the locality which the violation occurred or, if he believes the public interest will be adequately served thereby, he may direct to the alleged violator a suitable written notice or warning. (1941, c. 114, s. 8; 1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ 106-277.24. Penalty for violations. — Any person, firm or corporation violating any provision of this article or any rule or regulation adopted pursuant thereto shall be guilty of a misdemeanor and upon conviction thereof shall pay a fine of not more than five hundred dollars ($500.00). (1941, c. 114, s. 8; 1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ **106-277.25. Seizure and disposition of seeds violating article.**—Any lot of agricultural or vegetable seeds, mixtures of such seeds or screenings being sold, exposed for sale, offered for sale or held with intent to sell in this State contrary to the provisions of this article shall be subject to seizure on complaint of the Commissioner to the resident judge of the superior court in the county in which the seeds, mixtures of such seeds or screenings are located. In the event the court finds the seeds or screenings to be in violation of the provisions of this article and orders the condemnation thereof, such seeds or screenings shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this State; provided that in no instance shall such disposition be ordered by the court without first having given the claimant an opportunity to apply to the court for the release of the seeds, mixtures of such seeds or screenings with permission to process or relabel to bring them into compliance with the provisions of this article. (1945, c. 828; 1949, c. 725; 1963, c. 1182.)

§ **106-277.26. Publication of test results and other information.** — The Commissioner is authorized to publish the results of analyses, tests, examinations, studies and investigations made as authorized by this article, together with any other information he may deem advisable. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ **106-277.27. Cooperation with United States Department of Agriculture.**—The Commissioner is authorized to cooperate with the United States Department of Agriculture in seed law enforcement and testing seed for trueness as to kind and variety. (1941, c. 114, s. 6; 1943, c. 203, s. 4; 1945, c. 828; 1949, c. 725; 1953, c. 856, s. 5; 1957, c. 263, s. 3; 1963, c. 1182.)

§ **106-277.28. Fees for tags, stamps and licenses.**—For the purpose of providing a fund to defray the expense of inspection, examination, analyses of seeds and enforcement of the provisions of the article:

(1) Each seed dealer or grower selling, offering or exposing for sale in this State any agricultural or vegetable seeds for seeding purposes shall purchase from the Commissioner for two cents (2¢) each official North Carolina seed analysis tags or stamps and shall attach a tag (or a stamp on the seedsman's label) to each container holding ten pounds or more of seed, provided that this subdivision shall not apply to the sale of seed by a farmer who sells only seed grown on his farm and when such sales are confined to his farm.

(2) Each seed dealer selling, offering, or exposing for sale in, or exporting from, this State any agricultural or vegetable seeds for seeding purposes shall register with the Commissioner and shall obtain a license annually on January 1 of each year and shall pay for such license as follows:

a. Wholesale, or wholesale and retail, seed dealer in one location	$25.00
b. Central office of chain stores, or wholesale cooperatives operating within this State selling or furnishing seeds for retail	$25.00
c. Each retailer of seeds or branch of wholesale dealer or cooperative selling seeds at different locations with sales in excess of five hundred dollars ($500.00)	$15.00
d. Each retailer of seeds, including chain stores, with sales more than three hundred dollars ($300.00) but not in excess of five hundred dollars ($500.00)	$10.00

e. Each retailer of seeds, including chain stores, with sales more than one hundred dollars ($100.00) but not in excess of three hundred dollars ($300.00) .... $ 5.00

f. Each retailer of seeds, including chain stores with sales not in excess of one hundred dollars ($100.00) ...... $ 1.00

g. Each retail dealer or place of business selling only "packet" vegetable and flower seeds: One dollar ($1.00) for retail value less than one hundred dollars ($100.00); two dollars ($2.00) for the first one hundred dollars ($100.00); and two dollars ($2.00) for each one hundred dollars ($100.00) thereafter, based on commission or consignment. Containers which hold one pound or less of seed are considered packets. (1941, c. 114, s. 7; 1945, c. 828; 1947, c. 928; 1949, c. 725; 1963, c. 1182.)

§§ 106-278 to 106-284.4.

Editor's Note.—See note to § 106-277.

Article 31A.

Seed Potato Law.

§ **106-284.5. Title.**—This article shall be known as the Seed Potato Law. (1947, c. 467, s. 1.)

§ **106-284.6. Purposes; definitions and standards.** — In order to improve farming in North Carolina and to enable potato growers to secure higher quality Irish potatoes and sweet potatoes and parts thereof for the purpose of propagation, and in order to prevent the spread of diseases affecting the future stability of the potato industry and the general welfare of the public, the following definitions and standards are hereby adopted:

"Certified" sweet potatoes and Irish potatoes and parts thereof for propagation uses shall mean sweet potatoes and Irish potatoes and parts thereof which conform to the standards adopted by the State Board of Agriculture, which shall conform to the standards fixed by the International Crop Improvement Association in classifying and determining what shall constitute "certified" potatoes for propagation uses.

"U.S. No. 1" Irish potatoes and/or sweet potatoes when the same are intended to be used for propagation purposes shall mean Irish and/or sweet potatoes which conform to the standards issued by the United States Department of Agriculture for "U.S. No. 1" potatoes when the same are intended to be used for propagation purposes. (1947, c. 467, s. 2.)

§ **106-284.7. Unlawful to sell seed potatoes not conforming to standards; rules and regulations.**—It shall be unlawful for any person, firm or corporation to pack for sale, offer or expose for sale, or ship into this State for such purposes, or sell, any Irish potatoes, sweet potatoes or parts thereof intended for propagation purposes, which do not conform to the standards of "certified" and "U.S. No. 1" potatoes set out in § 106-284.6.

The State Board of Agriculture is hereby authorized to make such reasonable rules and regulations as may be necessary to carry out the purposes of this article. (1947, c. 467, s. 3.)

§ **106-284.8. Employment of inspectors; prohibiting sale.**—The Board of Agriculture is authorized to employ qualified inspectors to assist in the enforcement of laws and regulations affecting the distribution and sale of Irish potatoes and sweet potatoes and parts thereof intended for propagation purposes, and may prohibit the sale for propagation purposes of such potatoes which fail to meet the standards set out in § 106-284.6, and which have not been produced and labeled in accordance with the provisions of this article or rules and regulations adopted pursuant thereto. (1947, c. 467, s. 4.)

§ **106-284.9. Inspection; "stop-sale" orders; sale for other purposes than seed; use of other than sale certification tags; notice required.**—(a) To effectively enforce the provisions of this article, the Commissioner of Agriculture shall require the inspectors to inspect Irish and sweet potatoes and parts thereof shipped into, possessed, sold or offered for sale within this State for the purpose of propagation, and may enter any place of business, warehouse, common carrier or other place where such potatoes are stored or being held, for the purpose of making such inspection; and it shall be unlawful for any person, firm or corporation in custody of such potatoes or of the place in which the same are held to interfere with the Commissioner or his duly authorized agents in making such inspections.

(b) When the Commissioner or his authorized inspectors find potatoes or parts thereof held, offered or exposed for sale in violation of any of the provisions of this article or any rule or regulation adopted pursuant thereto, he may issue a written or printed "stop-sale" order to the owner or custodian of any such potatoes and it shall be unlawful for anyone, after receipt of such "stop-sale" order, to sell for propagation purposes any potatoes with respect to which such order has been issued. Such "stop-sale" order shall not prevent the sale of any such potatoes for other than propagation purposes.

(c) When a lot of seed potatoes is found to be in violation of the article and the owner or the person or firm in possession of the potatoes elects to remove the certification tags and sell for purposes other than for seed, such person or firm shall be required to furnish the Commissioner of Agriculture copies of sales memoranda or other acceptable evidence as to whom the potatoes were sold and a statement certifying that the potatoes were not sold for propagation purposes.

(d) It shall be unlawful for any person, firm or corporation to use, furnish for use or offer for use any tags, labels or other markings designating that the potatoes are intended for seed purposes except "Official Certification Tags" furnished by or approved by an officially designated certifying agency of the State of North Carolina.

(e) Any person, firm, or corporation receiving seed potatoes from outside of the State in lots of more than 20-100 pound bags shall notify the Department of Agriculture in Raleigh, or the nearest field office of the Department, not less than three (3) days and not more than ten (10) days prior to the anticipated arrival date, or on the date that the order is placed when said order is placed less than three (3) days prior to the anticipated arrival date, advising of said anticipated arrival date. Such notice shall also include the address at which the shipment is to be received. Such notice may be by letter, postal card, telegram, or telephone. (1947, c. 467, s. 5; 1957, c. 1381.)

§ **106-284.10. Authority to permit sale of substandard potatoes.**—Notwithstanding any other provisions of this article, the State Board of Agriculture is authorized and directed when the public necessity, welfare, economy, or any emergency situation requires it, to permit for such periods of time as, in its discretion, may seem necessary, the sale for propagation purposes of potatoes which do not meet the standards set out in § 106-284.6, but which do meet such other lower standards as the Board of Agriculture may describe. (1947, c. 467, s. 6.)

§ **106-284.11. Sale of potatoes by grower to planter with personal knowledge of growing conditions.**—Nothing in this article shall prohibit the sale, for propagation purposes in this State, of Irish or sweet potatoes or parts thereof grown within this State when sold by the grower thereof to a planter having personal knowledge of the conditions under which such potatoes were grown. (1947, c. 467, s. 7.)

§ **106-284.12. Violation a misdemeanor; notice to persons violating article; opportunity of hearing; duties of solicitors.**—Any person, firm or corporation violating any of the provisions of this article or any rule or regulation promulgated pursuant thereto shall be guilty of a misdemeanor and punished by fine or imprisonment, or both, in the discretion of the court. Whenever the Commissioner of Agriculture becomes cognizant of any violation of the provisions of this article he shall immediately notify in writing the person, firm or corporation if same be known. Any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the Commissioner and the Board of Agriculture. If it appears that any of the provisions of this article have been violated, the Commissioner of Agriculture shall certify the facts to the solicitor in the district in which the inspection was made, and furnish that officer with a copy of the results of the inspection of such Irish potatoes, sweet potatoes, or parts thereof duly authenticated by the inspector making such inspection, under the oath of such inspector. It shall be the duty of the several solicitors of the superior courts of the State and the solicitors of inferior courts to prosecute any case involving the violation of the provisions of this article when requested to do so by the Commissioner of Agriculture. (1947, c. 467, s. 9.)

§ **106-284.13. Article 30 not repealed.**—Nothing in this article shall be construed as repealing article 30 of chapter 106 of the General Statutes, but all other laws and clauses of laws in conflict with the provisions of this article are repealed to the extent of such conflict. (1947, c. 467, s. 9.)

ARTICLE 31B.

Vegetable Plant Law.

§ **106-284.14. Title.**—This article shall be known as the "Vegetable Plant Law." (1959, c. 91, s. 1.)

§ **106-284.15. Purpose of article.** — The purpose of this article is to improve vegetable practices in North Carolina and to enable vegetable producers to secure vegetable plants for transplanting that are free from diseases and insects, and in order to prevent the spread of diseases and insects affecting the future stability of the vegetable industry and the general welfare of the public. (1959, c. 91, s. 2.)

§ **106-284.16. Definitions.** — As used in this article, the words "certified vegetable plants for transplanting," shall mean plants which have been tagged or labeled so as to indicate that such plants have been inspected by an authorized agent of an officially recognized state inspecting or certifying agency of some state, and found to conform to the appropriate standards, however, in the discretion of the Commissioner of Agriculture this does not necessarily imply certification for variety purity.

As used in this article, the words "plants" or "vegetable plants" shall mean pepper, eggplant, sweet potato, onion, cabbage and tomato plants intended for transplanting purposes and such other vegetable plants intended for transplanting purposes as the State Board of Agriculture may designate by regulation in order to protect the vegetable industry.

As used in this article, the word "standards," as applied to vegetable plants, includes the qualities of color, freshness, firmness, strength, straightness, and unbroken conditions and freedom from injurious insects, diseases and nematodes and means the standards with respect thereto as established and fixed either by the International Crop Improvement Association or an officially recognized certifying or inspecting agency of a state. (1959, c. 91, s. 3.)

§ **106-284.17. Unlawful to sell plants not up to standard and not appropriately tagged or labelled.**—It shall be unlawful for any person, firm, or corporation to pack for sale, offer or expose for sale, or ship into this State any vegetable plants which do not meet the appropriate standards and which have not been appropriately tagged or labelled as certified vegetable plants for transplanting. (1959, c. 91, s. 4.)

§ **106-284.18. Rules and regulations.**—The State Board of Agriculture is hereby authorized to adopt reasonable rules and regulations to carry out the provisions of this article. (1959, c. 91, s. 5.)

§ **106-284.19. Inspection; interference with inspectors; "stop-sale" orders.**—To enforce the provisions of this article effectively, the Commissioner of Agriculture and his duly authorized agents are authorized to inspect vegetable plants, and may enter any place of business, warehouse, common carrier or other places where such vegetable plants are stored or being held, for the purpose of making such an inspection; and it shall be unlawful for any person, firm or corporation in custody of such vegetable plants or of the place in which the same are held to interfere with the Commissioner or his duly authorized agents in making such inspections. When the Commissioner or his authorized inspectors find vegetable plants being held, offered or exposed for sale in violation of any of the provisions of this article or any rule or regulation adopted pursuant thereto, he may issue a written or printed "stop-sale" order to the owner or custodian of any such vegetable plants and it shall be unlawful for anyone, after receipt of such "stop-sale" order, to sell for transplanting purposes any plants in respect to which such order has been issued unless and until so authorized by the Commissioner or his agent or a court of competent jurisdiction. (1959, c. 91, s. 6.)

§ **106-284.20. Violation a misdemeanor; notice to violators; opportunity for hearing; facts and results of inspection furnished to solicitor.**—Any person, firm or corporation violating any of the provisions of this article or any rule or regulation promulgated pursuant thereto shall be guilty of a misdemeanor and punished by fine or imprisonment, or both, in the discretion of the court. Whenever the Commissioner of Agriculture becomes cognizant of any violations of the provisions of this article, or regulations pursuant thereto, he shall immediately notify in writing the person, firm or corporation if same be known. Any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the Commissioner and the Board of Agriculture. If it appears that any of the provisions of this article have been violated, the Commissioner of Agriculture shall certify the facts to the solicitor in the district in which the inspection was made and furnish that officer with a copy of the results of the inspection of such vegetable plants thereof duly authenticated by the inspector making such inspection, under the oath of such inspector. Nothing in this section shall operate to prevent the Commissioner from issuing a "stop-sale" order pursuant to the provisions of this article. (1959, c. 91, s. 7.)

§ **106-284.21. Authority to permit sale of substandard plants.** — Notwithstanding any other provision of this article, the Commissioner of Agriculture is authorized when the public necessity, welfare, economy, or any emergency situation requires it, to permit for such periods of time as, in his discretion may seem necessary, the sale of vegetable plants for transplanting purposes which do not meet the standards referred to in § 106-284.16. (1959, c. 91, s. 8.)

§ **106-284.22. When article not applicable.** — This article shall not apply to the sale by a grower or a retail merchant of vegetable plants grown within this State when such sale is made for home or garden or any other noncommercial use. The provisions of this article shall not apply to the sale of vegetable plants for transplanting purposes in this State when grown within this State and sold by a plant producer to a planter having personal knowledge of the conditions under which such vegetable plants were grown or produced. (1959, c. 91, s. 9.)

Article 32.

Linseed Oil.

§ **106-285. Inspection and analysis authorized.**—For the purpose of protection of the people of the State from imposition by the fraudulent sale of adulterated or misbranded linseed oil or flaxseed oil as pure linseed oil or flaxseed oil, the Board of Agriculture shall cause inspection to be made from time to time and samples of such oil offered for sale in the State obtained, and shall cause the same to be analyzed or examined or tested by the oil chemist or other experts of the Department of Agriculture for the purpose of ascertaining or determining if same is adulterated or misbranded within the meaning of this article or is otherwise offered for sale in violation of this article. (1917, c. 172, s. 1; C. S., s. 4832.)

§ **106-286. Raw and boiled linseed oil defined.** — The term "raw linseed oil" as used herein shall be construed to mean the oil obtained wholly from commercially pure linseed or flaxseed, and the term "boiled linseed oil" as used herein shall be construed to mean linseed oil that has been heated in the process of its manufacture to a temperature of not less than two hundred and twenty-five degrees Fahrenheit. (1917, c. 172, s. 2; C. S., s. 4833.)

§ **106-287. Adulterated linseed oil defined.**—For the purpose of this article linseed oil shall be deemed to be adulterated if it be not wholly the product of commercially pure and well cleaned linseed or flaxseed, and unless the oil also fulfills the requirements of the chemical test for pure linseed oil, described in the edition of the United States Pharmacopoeia for the year nineteen hundred. (1917, c. 172, s. 3; C. S., s. 4834.)

§ **106-288. Sale of prohibited products; statement required of dealer.**—No person, firm, or corporation, by himself or agent or as the agent of any other person, firm, or corporation, shall manufacture or mix for sale, sell, offer or expose for sale, or have in his posesssion with intent to sell under the name of raw linseed oil or boiled linseed oil, or under any name or device that suggests raw or boiled linseed oil, any article which is not wholly the product of commercially pure linseed or flaxseed, or that is adulterated or misbranded within the meaning of this article, except as is hereinafter provided, and any manufacturer, wholesaler, or jobber desiring to do business in the State shall file with the Commissioner of Agriculture a statement to that effect and furnish the name of the oil or oils which he proposes to sell by sample or otherwise, and that the oil or oils will comply with the requirements of this article. (1917, c. 172, s. 4; C. S., s. 4835.)

§ **106-289. Drying agents; label to state name and percentage.** — Boiled linseed oil which has been heated to a temperature of not less than two hundred and twenty-five degrees Fahrenheit may contain drying agents not to exceed four percent by volume, provided that the name and percent of each drying agent present be plainly stated in connection with the name of the oil on the receptacle containing same; and provided further, that the statement is printed in letters that meet the requirements of the regulations adopted by the Board of Agriculture under this article. (1917, c. 172, s. 5; C. S., s. 4836.)

§ **106-290. Compounds, imitations, and substitutes regulated.** — Nothing in this article shall be construed to prohibit the sale of compound linseed oil, imitation linseed oil, or any substance to be used as a substitute for linseed oil, provided the receptacle containing same shall be plainly and legibly stamped, stenciled, or marked compound linseed oil, or imitation oil, or with the name of the substance to be used for linseed oil, as the case may be; and provided further, that the name is stenciled or marked on the container of same in a manner that will meet the requirements of the regulations adopted by the Board of Agriculture under this article. (1917, c. 172, s. 6; C. S., s. 4837.)

§ **106-291. Containers to be marked with specified particulars.**—Before any raw linseed oil or any boiled linseed oil or any boiled linseed oil with drying agents added or any compound linseed oil or any imitation linseed oil or any other substance used or intended to be used as a substitute for linseed oil shall be sold or offered for sale in this State, the container in which same is kept for sale or sold shall have distinctly, legibly, and durably painted, stamped, stenciled, or marked thereon the true name of such oil or substance, setting forth in bold-face capital letters that meet the regulations prescribed by the Board of Agriculture, whether it be raw linseed oil or boiled linseed oil with drying agent added, or a compound linseed oil or an imitation linseed oil or a substitute for linseed oil, as the case may be; and the container, if a wholesale package, shall also bear the name and address of the manufacturer or jobber of such oil. (1917, c. 172, s. 7; C. S., s. 4838.)

§ **106-292. Entry for samples authorized.**—The inspectors or agents of the Department of Agriculture, authorized to make inspection under this article, shall have authority, during business hours, to enter all stores, warehouses, or any other place where products named in this article are stored or sold or offered for sale, for the purpose of inspection and obtaining samples of such products. (1917, c. 172, s. 8; C. S., s. 4839.)

§ **106-293. Refusing samples or obstructing enforcement of article forbidden.**—Every person who offers for sale or delivers to a purchaser any article named in this article shall furnish, within business hours and upon the payment or tender of the selling price, a sample of such product to any person duly authorized to secure the same, and who shall apply to such vender for such sample of such article in his possession; and any dealer or vender who refuses to comply, upon demand, with the requirements of this section, or any person who shall impede, hinder, or obstruct or otherwise prevent or attempt to prevent any chemist, inspector, or agent of the Department in the performance of his duty in connection with this article, shall be guilty of a violation of this article. (1917, c. 172, s. 8; C. S., s. 4840.)

§ **106-294. Violations of article a misdemeanor.** — Any person who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and for such offense, upon conviction thereof, shall be fined not exceeding one hundred dollars for the first offense and for each subsequent offense in the discretion of the court. (1917, c. 172, s. 9; C. S., s. 4841.)

§ **106-295. Forfeiture for unauthorized offer; disposal of proceeds.**—The oil offered for sale in violation of this article shall be subject to seizure, condemnation, and sale by the Commissioner of Agriculture, as is provided for the seizure, condemnation, and sale of commercial fertilizer; and the proceeds thereof, if sold, less the legal cost and charges, shall be paid into the treasury for the use of the Department of Agriculture in executing the provisions of this article. (1917, c. 172, s. 9; C. S., s. 4842.)

§ **106-296. Commissioner to notify solicitor of violations and certify facts.**—If it shall appear from the inspection or other examination of oils that any of the provisions of this article have been violated, besides the action above provided for, the Commissioner of Agriculture shall certify the facts to the solicitor in the district in which the violation was committed, and furnish the officer with the facts in the case, duly authenticated by the expert, under oath, who made the examination. (1917, c. 172, s. 10; C. S., s. 4843.)

§ **106-297. Solicitor to prosecute.** — It shall be the duty of the solicitor to prosecute such cases for fines and penalties provided for in this article in courts of competent jurisdiction. (1917, c. 172, s. 10; C. S., s. 4844.)

§ **106-298. Inspection tax.**—For the purpose of defraying expenses incurred in the enforcement of the provisions of this article there shall be paid to the Commissioner of Agriculture an inspection tax of one-half cent per gallon for any and all linseed oil or compound linseed oil or any substance used or intended to be used as a substitute for linseed oil, which payment shall be made before the delivery of such oil to any agent, retail dealer, or consumer in this State. (1917, c. 172, s. 11; C. S., s. 4845.)

§ **106-299. Tax tags.** — Each can, barrel, tank, or other container of oils named in this article shall have attached thereto an inspection tag or stamp stating that the inspection charges specified in this article have been paid; and the Commissioner of Agriculture, with the advice and consent of the Board, is hereby authorized to prescribe a form for such tags or stamps: Provided, that they shall be such as to meet the requirements of the trade of linseed oil. (1917, c. 172, s. 11; C. S., s. 4846.)

§ **106-300. Refilling containers and misuse of tags prohibited.**—The refilling of a container bearing an inspection tag or stamp on which the inspection tax has not been paid or the use of an inspection tax or stamp a second time shall constitute a violation of this article. (1917, c. 172, s. 12; C. S., s. 4847.)

§ **106-301. Rules to enforce article; misdemeanor.** — The Board of Agriculture is hereby authorized to adopt such rules and regulations in regard to handling linseed oil, refilling containers, and use of inspection tags or stamps a second time, as will insure the enforcement of the provisions of this article, and a violation of the said rules or regulations shall constitute a violation of this article. (1917, c. 172, s. 13; C. S., s. 4848.)

§ **106-302. Dealer released by guaranty of wholesaler.** — No dealer shall be prosecuted under the provisions of this article when he can establish a guaranty signed by the manufacturer, jobber, wholesaler, or other party from whom he purchased such article, designating it, to the effect that the same is not adulterated or misbranded within the meaning of this article. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such article to such dealer, and in such cases said party or parties, if in this State, shall be amenable to the prosecutions, fines, and other penalties which would attach, in due course, to the dealer under the provisions of this article: Provided, that the above guaranty shall not afford protection to any dealer after the first offense in connection with a product from a particular manufacturer, jobber, or wholesaler, or for the sale of oil which is not properly labeled, branded, stamped, or tagged, or on which the inspection tax has not been paid. (1917, c. 172, s. 14; C. S., s. 4849.)

Article 33.

Adulterated Turpentine.

§ **106-303. Sale of adulterated turpentine misdemeanor.**—If any person shall adulterate or cause to be adulterated any spirits turpentine, or shall knowingly sell or offer for sale as pure spirits turpentine any adulterated spirits turpentine, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than fifty dollars or imprisoned for thirty days. (1897, c. 482; Rev., s. 3830; C. S., s. 5089.)

Article 34.

Animal Diseases.

Part 1. Quarantine and Miscellaneous Provisions.

§ 106-304. Proclamation of livestock quarantine. — Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue his proclamation forbidding the importation into this State of any and all kinds of livestock from any state where there is known to prevail contagious or infectious diseases among the livestock of such state. (1915, c. 174, s. 1; C. S., s. 4871.)

§ 106-305. Proclamation of infected feedstuff quarantine. — Upon the recommendation of the Commissioner of Agriculture, it shall be lawful for the Governor to issue his proclamation forbidding the importation into this State of any feedstuff or any other article or material dangerous to livestock as a carrier of infectious or contagious disease from any area outside of the State. This shall also include any and all materials imported for manufacturing purposes or for any other use, which have been tested by any State or federal agency competent to make such tests and found to contain living infectious and contagious organisms known to be injurious to the health of man or livestock. (1915, c. 174, s. 2; C. S., s. 4872; 1953, c. 1328.)

§ 106-306. Rules to enforce quarantine.—Upon such proclamation being made, the Commissioner of Agriculture shall have power to make rules and regulations to make effective the proclamation and to stamp out such infectious or contagious diseases as may break out among the livestock in this State. (1915, c. 174, s. 3; C. S., s. 4873.)

Cross Reference.—See § 106-22, subdivision (3).

Cattle Ticks.—The regulation of a quarantine district laid off and enforced in pursuance of § 106-22, subdivision (3), and this section, for the eradication of ticks on cattle is a reasonable and valid regulation. State v. Hodges, 180 N.C. 751, 105 S.E. 417 (1920).

§ 106-307. Violation of proclamation or rules. — Any person, firm, or corporation violating the terms of the proclamation of the Governor, or any rule or regulation made by the Commissioner of Agriculture in pursuance thereof, shall be guilty of a misdemeanor and fined or imprisoned in the discretion of the court. (1915, c. 174, s. 4; C. S., s. 4874.)

§ 106-307.1. Serums, vaccines, etc., for control of animal diseases. —The North Carolina Department of Agriculture is authorized and empowered to purchase for resale serums, viruses, vaccines, biologics, and other products for the control of animal diseases. The resale of said serums, viruses, vaccines, biologics and other products shall be at a reasonable price to be determined by the Commissioner of Agriculture. (1943, c. 640, s. 1.)

Editor's Note. — For comment on this section and §§ 106-307.2 to 106-307.6, see 21 N.C.L. Rev. 323.

§ 106-307.2. Reports of infectious disease in livestock to State Veterinarian.—All persons practicing veterinary medicine in North Carolina shall report promptly to the State Veterinarian the existence of any contagious or infectious disease in livestock. (1943, c. 640, s. 2.)

§ 106-307.3. Quarantine of infected or inoculated livestock. — Hog cholera and other contagious and infectious diseases of livestock are hereby declared to be a menace to the livestock industry and all livestock infected with or exposed to a contagious or infectious disease shall be quarantined by the State

Veterinarian or his authorized representative in accordance with regulations promulgated by the State Board of Agriculture. All livestock that are inoculated with a product containing a living virus or organism shall be quarantined by the person inoculating same at the time of inoculation in accordance with regulations promulgated by the State Board of Agriculture: Provided, nothing herein contained shall be construed as preventing anyone entitled to administer virus or serum vaccine under existing laws from continuing to administer same. (1943, c. 640, s. 3.)

Cross Reference.—See § 106-401.

§ **106-307.4. Livestock brought into State.** — All livestock transported or otherwise brought into this State shall be in compliance with regulations promulgated by the State Board of Agriculture. (1943, c. 640, s. 4.)

Cross Reference.—See § 106-400.

Validity of Regulations. — Regulations relating to the importation of cattle, promulgated under authority of this section for the purpose of control of brucellosis or Bang's disease, if reasonable in their scope and incidence and not in conflict with federal regulations or statutes already preempting the field, are constitutional and valid. State v. Lovelace, 228 N.C. 186, 45 S.E.2d 48 (1947).

A provision in the regulations promulgated under authority of this section, limiting the exception to the requirement of a health certificate for imported cattle solely to those consigned to a slaughterhouse, is reasonable and valid. State v. Lovelace, 228 N.C. 186, 43 S.E.2d 48 (1947).

§ **106-307.5. Appropriations for control of hog cholera, etc.** — For the purpose of carrying out the provisions of §§ 106-307.1 to 106-307.6, the sum of twelve thousand and five hundred dollars ($12,500.00) is hereby appropriated for the year one thousand nine hundred and forty-three-forty-four, and twelve thousand and five hundred dollars ($12,500.00) for the year one thousand nine hundred and forty-four-forty-five, to come from the General Fund, which shall be in addition to any other funds appropriated for the control of hog cholera and other animal diseases. (1943, c. 640, s. 5.)

§ **106-307.6. Violation made misdemeanor.**—Any person, firm or corporation who shall violate any provisions set forth in §§ 106-307.1 to 106-307.4 or any rule or regulation duly established by the State Board of Agriculture shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. (1943, c. 640, s. 6.)

Applied in State v. Lovelace, 228 N.C. 186, 45 S.E.2d 48 (1947).

Part. 2. Foot and Mouth Disease; Rinderpest; Fowl Pest; Newcastle Disease.

§ **106-308. Appropriation to combat animal and fowl diseases.** — If the foot and mouth disease, rinderpest (cattle plague), fowl pest, or Newcastle disease (Asiatic or European types), or any other type of foreign infectious disease which may become a menace to livestock and poultry and so declared to be by the Secretary of Agriculture of the United States, Chief of the United States Bureau of Animal Industry and the Commissioner of Agriculture of North Carolina, seem likely to appear in this State and an emergency as to such disease or diseases is declared by the Secretary of Agriculture of the United States, or his authorized agents, and the North Carolina Department of Agriculture has no funds available to immediately meet the situation in cooperation with the United States Department of Agriculture, the Director of the Budget, upon approval of the Governor and Council of State, shall set aside, appropriate and make available out of the Contingency and Emergency Fund such sum as the Governor and Council of State shall deem proper and necessary, and the Budget Bureau shall place said funds in an account to be known as the Animal and Fowl Disease Appropriation and make same available to the North Carolina Department of Agriculture, to be used by the North Carolina Department of Agriculture in the work of preventing or eradicating the above diseases, or any of them. Funds from the above appropriation shall be paid only for work in this connection upon warrants approved by the Commissioner of Agriculture. The provisions of part 4 of article 34 of chapter 106 of the General Statutes relating to the compensation for killing diseased animals shall be applicable to animals infected with or exposed to the diseases named and described in this section, as well as to the destruction of material contaminated by or exposed to the diseases described in this section, as well as the necessary cost of the disinfection of materials. In no event shall any of the above appropriation shall be paid only for work in this connection upon warrants funds appropriated by this State are matched in an equal amount by the federal government or one of its agencies to be spent for the same purposes. (1915, c. 160, s. 1; C. S., s. 4875; 1951, c. 799.)

§ **106-309. Disposition of surplus funds.**—If said disease shall have appeared and shall have been eradicated and work is no longer necessary in connection with it, the State Treasurer shall return such part of the appropriation as is not expended to the general fund, and the Commissioner of Agriculture shall furnish the Governor an itemized statement of the money expended, and all moneys set aside out of the State funds and used for the purpose of eradicating said disease under the provisions of this article shall be paid back to the State funds by the Department of Agriculture out of the first funds received by said agricultural Department available for such purpose. (1915, c. 160, s. 2; C. S., c. 4876.)

Part 3. Hog Cholera.

§ **106-310. Burial of hogs dying natural death required.**—It shall be the duty of every person, firm, or corporation who shall lose a hog by any form of natural death to have the same buried in the earth to a depth of at least two feet within twelve hours after the death of the animal. Any person, firm, or corporation that shall fail to comply with the terms of this section shall be guilty of a misdemeanor, and shall be fined not less than five dollars nor more than ten for each offense, at the discretion of the court. (1915, c. 225; C. S., s. 4877.)

§ **106-311. Hogs affected with cholera to be segregated and confined.** — If any person having swine affected with the disease known as hog cholera, or any other infectious or contagious disease, who discovers the same, or to whom notice of the fact shall be given, shall fail or neglect for one day to secure the diseased swine from the approach of or contact with other hogs not so affected, by penning or otherwise securing and effectually isolating them, so that they shall not have access to any ditch, canal, branch, creek, river or other watercourse which passes beyond the premises of the owners of such swine, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not exceeding thirty days. (1889, c. 173, s. 1; 1891, c. 67, ss. 1, 3; 1899, c. 47; 1903, c. 106; Rev., s. 3297; 1913, c. 120; C. S., s. 4490.)

Cross Reference.—See § 106-402.

§ **106-312. Shipping hogs from cholera-infected territory.** — It shall be unlawful for any person, firm or corporation in any district or territory infected by cholera to bring, carry, or ship hogs into any stock-law section or territory, unless such hogs have been certified to be free from cholera either by the farm demonstration agent of the county or some other suitable person to be designated by the clerk of the superior court. Any violation of this section shall constitute a misdemeanor. (1917, c. 203; C. S., s. 4491.)

§ **106-313. Price of serum to be fixed.**—The Department of Agriculture shall fix the price of anti-hog-cholera serum at such an amount as will cover the cost of production. (1917, c. 275, s. 1; 1919, c. 6; C. S., s. 4878.)

Cross Reference. — As to purchase for resale by Department of Agriculture, see § 106-307.1.

§ 106-314. Manufacture and use of serum and virus restricted.—It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the State anti-hog-cholera serum unless said anti-hog-cholera serum is produced at the serum plant of the State Department of Agriculture, or produced in a plant which is licensed by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture, allowing said plant to do an interstate business.

It shall be unlawful for any person, firm, or corporation to distribute, sell, or use in the State of North Carolina, virulent blood from hog-cholera-infected hogs, or virus, unless said virulent blood, or virus, is produced at the serum plant of the State Department of Agriculture or produced in a plant which is licensed by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture, allowing said plant to do an interstate business. No virulent blood from hog-cholera-infected hogs, or virus, shall be distributed, sold or used in the State unless and until permission has been given in writing by the State Veterinarian for such distribution, sale or use. Said permission to be cancelled by the State Veterinarian when necessary.

Any person, firm, or corporation guilty of violating the provisions of this section or failing or refusing to comply with the requirements thereof shall be guilty of a misdemeanor. (1915, c. 88; 1919, c. 125, ss. 1, 2, 3; C. S., s. 4879; 1959, c. 576, s. 1.)

Local Modification.—Currituck: 1943, c. 199; Edgecombe: 1933, c. 139; Hyde 1943, c. 693; Nash: 1935, cc. 67, 222; Pasquotank: 1943, c. 358; Pitt: 1935, c. 352; Tyrrell: 1943, c. 693; Wilson: 1933, c. 58.

Cross Reference.—As to purchase for resale by Department of Agriculture, see § 106-307.1.

§ 106-315. Written permit from State Veterinarian for sale, use or distribution of hog cholera virus, etc.—No hog cholera virus or other product containing live virus or organisms of animal diseases shall be distributed, sold, or used within the State unless permission has been given in writing by the State Veterinarian for such distribution, sale, or use, said permission to be canceled by the State Veterinarian when he deems same necessary. (1939, c. 360, s. 5; 1959, c. 576, s. 2.)

Local Modification.—Currituck 1943, c. 199; Hyde: 1943, c. 693; Pasquotank: 1943, c. 358; Tyrrell: 1943, c. 693.

§ 106-316. Counties authorized to purchase and supply serum. — If the county commissioners of any county in the State deem it necessary to use anti-hog-cholera serum to control or eradicate the disease known as hog cholera, they are authorized within their discretion to purchase from the State Department of Agriculture sufficient anti-hog-cholera serum and virus for use in their county and supply same free of cost to the residents of the county, or pay for any portion of the cost of said serum, the remaining portion to be paid by the owners of the hogs.

The use of anti-hog-cholera serum and virus and the quarantine of diseased animals shall remain under the supervision of the State Veterinarian.

Nothing in this section shall in any way interfere with existing laws and regulations covering the use of anti-hog-cholera serum and virus and the quarantine and control of contagious diseases, or any laws or regulations that may become necessary in the future. (1919, c. 132; C. S., s. 4881.)

§ 106-316.1. Purpose of §§ 106-316.1 to 106-316.5.—It is the purpose and intent of §§ 106-316.1 to 106-316.5 to safeguard the swine industry in North Carolina through a program designed to prevent the spread of hog cholera by prohibiting and restricting the use of virulent hog cholera virus; to provide for the use of modified live virus hog cholera vaccines that have been licensed as such by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture; to empower the State Board of Agriculture to establish rules and regulations and the Commissioner of Agriculture to establish emergency rules and regulations governing the movement of hogs into the State from other states and within the State; to establish rules and regulations designating the minimum dosage of anti-hog-cholera serum and antibody concentrate that shall be used in combination with modified live virus hog cholera vaccines on swine vaccinated at public livestock markets and other places; and to establish such other rules and regulations and emergency rules and regulations as may be necessary for carrying out the purposes of §§ 106-316.1 to 106-316.5. (1955, c. 824, s. 1; 1959, c. 576, s. 3.)

§ 106-316.2. Use of virulent hog cholera virus prohibited without permit; virulent hog cholera virus defined; use of modified live virus vaccines. — Notwithstanding any other provision of the law, either general, public-local, special or private, and except as herein provided, the possession, sale and use of virulent hog cholera virus in North Carolina is hereby prohibited. Virulent hog cholera virus referred to in this section means any unattended hog cholera cirus collected directly or indirectly from blood or other tissues of swine infected with hog cholera which has not been licensed as a modified live virus hog cholera vaccine. The State Veterinarian may issue a permit authorizing the sale, possession and use of virulent hog cholera virus only for the purpose of laboratory diagnosis; official research programs; production of anti-hog-cholera serum, antibody concentrate, modified live virus, killed virus vaccine, and similar biological products; and following a declaration that a state of emergency exists in a designated quarantined hog cholera area or areas within the State by the Commissioner of Agriculture of North Carolina. The use of virulent hog cholera virus during a declared state of emergency shall be under the direct supervision of the State Veterinarian or his authorized representative. Modified live virus hog cholera vaccines that have been licensed as such by the Biological Products Licensing Section, Animal Inspection and Quarantine Division, Agricultural Research Service of the United States Department of Agriculture may be sold and used in compliance with the General Statutes of North Carolina and the rules, regulations, definitions and standards adopted by the North Carolina Board of Agriculture and the emergency rules and regulations established by the Commissioner of Agriculture. (1955, c. 824, s. 2; 1959, c. 576, s. 4.)

§ 106-316.3. Unlawful to import hogs inoculated with virulent virus; exceptions for immediate slaughter; health certificate and permit required.—It shall be unlawful to bring hogs into North Carolina that have been inoculated with virulent hog cholera virus less than thirty days prior to the date of entry, except for immediate slaughter, and in addition thereto the transportation or importation of such hogs that have been inoculated with virulent hog cholera virus must be accompanied by the health certificate and permit as required by the rules and regulations of the North Carolina Board of Agriculture or emergency rules and regulations of the North Carolina Commissioner of Agriculture. The provisions of this section shall not be construed to be in conflict with or to repeal any provisions of G.S. 106-317 through G. S. 106-322 or any other statute or rule or regulation prohibiting, restricting or controlling the interstate movement of hogs for other reasons. (1955, c. 824, s. 3; 1959, c. 576, s. 5.)

§ 106-316.4. Penalties for violation of §§ 106-316.1 to 106-316.5.—Any person, firm or corporation violating the provisions of §§ 106-316.1 to 106-316.5 shall be guilty of a misdemeanor, and upon the first conviction shall be fined not less than fifty dollars ($50.00) or imprisoned in the discretion of the court.

For a second offense, any such violator shall be fined not less than two hundred dollars ($200.00) or imprisoned in the discretion of the court, or both. (1955, c. 824, s. 4.)

§ **106-316.5:** Repealed by Session Laws 1963, c. 1084, s. 2.

§ **106-317. Regulation of the transportation or importation of hogs and other livestock into State.**—To prevent the spread of hog cholera, vesicular exanthema, vesicular stomatitis, foot and mouth disease, or any other contagious, infectious and communicable swine disease in North Carolina, the North Carolina Board of Agriculture is authorized and empowered to promulgate rules and regulations governing the transportation and importation of swine into North Carolina from any other state or territory: Provided, that following a proclamation by the Secretary of Agriculture of the United States and the Commissioner of Agriculture of North Carolina that a state of emergency exists, arising from the existence of a dangerous contagious and infectious disease of livestock which threatens the livestock industry of the country, the North Carolina Commissioner of Agriculture is empowered and authorized to immediately promulgate emergency rules and regulations governing the movement of swine and other livestock within the State and prohibiting, restricting and/or controlling the transportation and importation of swine and other livestock into North Carolina for the duration of the emergency. The emergency rules and regulations promulgated by the North Carolina Commissioner of Agriculture shall be subject to approval, disapproval or change at the next regular or special meeting of the North Carolina Board of Agriculture. The North Carolina Board of Agriculture under the authority of this section may by regulation establish a system of health certificates and permits for the better protection of the swine and livestock of this State. (1941, c. 373, s. 1; 1955, c. 424, s. 1.)

§ **106-318. Issuance of health certificates for swine and livestock; inspection.**—Such health certificates that may be required under the rules and regulations by the Board of Agriculture or the emergency rules and regulations of the Commissioner of Agriculture shall be issued by a State, federal or duly licensed veterinarian in the state of origin certifying that the swine or other livestock transported and imported are healthy and not infected with or exposed to a contagious, infectious or communicable swine or other livestock disease, and all permits required under such rules and regulations shall be in possession of the owner or agent in charge, at all times until delivery of such swine or other livestock, and upon request, the owner or agent in charge shall produce said required certificate and permit for inspection by any police or peace officer or inspection agent of this State or any county thereof. The burden shall be on the person transporting said swine or other livestock to prove the origin, identity and destination of such swine and other livestock. (1941, c. 373, s. 2; 1955, c. 424, s. 2.)

§ **106-319. Burial of hogs and other livestock dying in transit.** — It shall be the duty of any owner or agent having in charge any swine or other livestock imported or transported into this State who shall, before delivery lose a hog or other livestock from natural or unnatural death to have the same delivered to a rendering plant or buried in the area to a depth of at least two feet within twelve hours after death of said swine or other livestock. (1941, c. 373, s. 3; 1955, c. 424, s. 3.)

§ **106-320:** Repealed by Session Laws 1963, c. 1084, s. 2.

§ **106-321. Penalties for violation.**—Any person, firm or corporation who shall violate any provision set forth in this article or any rule or regulation duly established by the State Board of Agriculture or emergency rules and regulations established by the Commissioner of Agriculture shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. (1941, c. 373, s. 5; 1955, c. 424, s. 4.)

§ **106-322. Effect of §§ 106-317 to 106-322.** — Sections 106-317 to 106-322 shall not repeal article 34, chapter 106, but shall be complementary thereto. (1941, c. 373, s. 6.)

§ **106-322.1. State-federal hog cholera cooperative agreements; establishment of hog cholera eradication areas.**—The Commissioner of Agriculture is authorized to enter into cooperative State-federal agreements with the United States Department of Agriculture for the purpose of State-federal programs for the control and eradication of hog-cholera. The Commissioner of Agriculture may designate individual counties or two or more counties as hog cholera eradication areas. (1963, c. 1084, s. 1.)

§ **106-322.2. Indemnity payments.**—If it appears to be necessary for the control and eradication of hog cholera to destroy or slaughter swine affected with such disease and to compensate the owners for the loss thereof, the State Veterinarian is authorized to agree on the part of the State, in the case of swine destroyed or slaughtered on account of being affected with hog cholera or exposure to same to pay one third of the difference between the appraised value of each animal destroyed or slaughtered and the value of the salvage thereof; provided, that the State indemnity shall not be in excess of the indemnity payments made by the federal cooperating agency; provided further, that State indemnity payments shall be restricted to swine located on the farm or feed lot of the owner or authorized representative of the owner; provided further, that in no case shall any payments by the State be more than twelve dollars and fifty cents ($12.50) for any grade animal nor more than twenty-five dollars ($25.00) for any purebred animal and subject to available State funds. The procedure such as appraisal, disposal and salvage for killing such diseased and exposed swine shall be carried out in the same manner as that required under the General Statutes of North Carolina governing compensation for killing other diseased animals. (1963, c. 1084, s. 1.)

Part 4. Compensation for Killing Diseased Animals.

§ **106-323. State to pay part of value of animals killed on account of disease.**—If it appears to be necessary for the control or eradication of Bang's disease and tuberculosis and para-tuberculosis in cattle, or glanders in horses and mules, to destroy such animals affected with such diseases and to compensate owners for loss thereof, the State Veterinarian is authorized, within his discretion, to agree on the part of the State, in the case of cattle destroyed for Bang's disease and tuberculosis, and para-tuberculosis to pay one third of the difference between the appraised value of each animal so destroyed and the value of the salvage thereof: Provided, that in no case shall any payment by the State be more than twelve dollars and fifty cents for any grade animal nor more than twenty-five dollars for any purebred animal. In the case of horses or mules destroyed for glanders to pay one half of the appraised value, said half not to exceed one hundred dollars. (1919, c. 62, s. 1; C. S., s. 4882; 1929, c. 107; 1939, c. 272, ss. 1, 2.)

Cross References.—As to indemnity for swine destroyed on account of being affected by hog cholera, see § 106-322.2. As to provision that failure to kill animal affected with glanders constitutes a misdemeanor, see § 106-404.

§ **106-324. Appraisal of cattle affected with Bang's disease and tuberculosis.** — Cattle affected with Bang's disease and tuberculosis and paratuberculosis shall be appraised by three men—one to be chosen by the owner, one by the United States Bureau of Animal Industry, and one by the State Veterinarian. If the United States Bureau of Animal Industry is not represented, then the appraisers shall be chosen, one by the owner, one by the State Veterinarian, the third to be chosen by the first two named. The finding of such appraisers shall be final. (1919, c. 62, s. 2; C. S., s. 4883; 1929, c. 107; 1939, c. 272, s. 1.)

§ 106-325. Appraisal of animals affected with glanders; report.—Animals affected with glanders shall be appraised by three men—one to be chosen by the owner, one to be chosen by the State Veterinarian, the third to be named by the first two chosen, the finding of such appraisers to be final. The report of appraisal to be made in triplicate on forms furnished by the State Veterinarian, and a copy sent to the State Veterinarian at once. (1919, c. 62, s. 3; C. S., s. 4884.)

§ 106-326. Report of appraisal of cattle affected with Bang's disease and tuberculosis to State Veterinarian; contents.—Appraisals of cattle affected with Bang's disease or tuberculosis shall be reported on forms furnished by the State Veterinarian, which shall show the number of animals, the appraised value of each per head, or the weight and appraised value per pound, and shall be signed by the owners and the appraisers. This report must be made in triplicate and a copy sent to the State Veterinarian: Provided, that the State Veterinarian may change the forms for making claims so as to conform to the claim forms used by the United States Department of Agriculture. (1919, c. 62, s. 4; C. S., s. 4885; 1939, c. 272, ss. 1, 3.)

§ 106-327. Marketing of cattle affected with Bang's disease and tuberculosis.—Each owner of cattle affected with Bang's disease or tuberculosis, which have been appraised, and which have been authorized by the State Veterinarian to be marketed, shall market the cattle within thirty days and shall obtain from the purchaser a report in triplicate. One copy to be sent by the State Veterinarian at once, certifying as to the amount of money actually paid for the animals, all animals to be identified on report. (1919, c. 62, s. 5; C. S., s. 4886; 1939, c. 272, s. 1.)

§ 106-328. Report on salvage.—When the appraised cattle have been slaughtered and the amount of salvage ascertained, a report, on forms furnished by the State Veterinarian, in triplicate shall be made, signed by the owner and the United States Bureau of Animal Industry or State inspector and the appraisers by which the animals were appraised and destroyed, showing the difference between the appraised value and salvage. Two copies are to be attached to the voucher in which compensation is claimed, and one copy to be furnished by the owner of cattle. (1919, c. 62, s. 6; C. S., s. 4887.)

§ 106-329. Compensation when killing ordered. — Compensation for animals destroyed on account of glanders will only be paid when such destruction is ordered by the State Veterinarian or his authorized representative. When the owner of the animals presents his claim he shall support same with the original report of the appraiser, together with the report of the inspector who destroyed the animal, to the State Veterinarian. (1919, c. 62, s. 7; C. S., s. 4888.)

§ 106-330. Ownership of destroyed animals; outstanding liens.—When animals have been destroyed pursuant to this article the inspector shall take reasonable precautions to determine, prior to his approval of vouchers in which compensation is claimed, who is the owner of and whether there are any mortgages or other liens outstanding against the animals. If it appears that there are outstanding liens, a full report regarding same shall be made and shall accompany the voucher. Every such report shall include a description of the liens, the name of the person or persons having possession of the documentary evidence, and a statement showing what arrangements, if any, have been made to discharge the liens outstanding against the animals destroyed of which the inspector may have knowledge. (1919, c. 62, s. 8; C. S., s. 4889.)

§ **106-331. State not to pay for feed of animals ordered killed.**—Expense for the care and feeding of animals held for slaughter shall not be paid by the State. (1919, c. 62, s. 9; C. S., s. 4890.)

§ **106-332. Disinfection of stockyards by owners.**—Stockyards, pens, cars, vessels and other premises and conveyances will be disinfected whenever necessary for the control and eradication of disease by the owners at their expense under the supervision of an inspector of the United States Bureau of Animal Industry or State Veterinarian. (1919, c. 62, s. 10; C. S., s. 4891.)

§ **106-333. Payments made only on certain conditions.**—No payments shall be made for any animal slaughtered in the following cases:

(1) If the owner does not disinfect premises, etc., as directed by an inspector of the United States Bureau of Animal Industry or the State Veterinarian.
(2) For any animals destroyed where the owner has not complied with all lawful quarantine regulations.
(3) Animals reacting to a test not approved by the State Veterinarian.
(4) Animals belonging to the United States.
(5) Animals brought into the State in violation of the State laws and regulations.
(6) Animals which the owner or claimant knew to be diseased, or had notice thereof, at the time they came into his possession.
(7) Animals which had the disease for which they were slaughtered or which were destroyed by reason of exposure to the disease, at the time of their arrival in the State.
(8) Animals which have not been within the State of North Carolina for at least one hundred and twenty days prior to the discovery of the disease.
(9) Where owner does not use reasonable care in protecting animals from disease.
(10) Where owner has failed to submit the necessary reports as required by this article.
(11) Any unregistered bull. (1919, c. 62, s. 11; C. S., s. 4892; 1939, c. 272, s. 4.)

§ **106-334. Owner's claim for indemnity supported by reports.**—The owner must present his claim for indemnity to the State Veterinarian for approval, and the claim shall be supported with the original report of the appraisers, the original report of the sale of the animals in the case of cattle destroyed on account of Bang's disease and tuberculosis, the certificate of the State or United States Bureau of Animal Industry inspector, and a summary of the claim. All of which shall constitute a part of the claim.

The owner must state whether or not the animals are owned entirely by him or advise fully of any partnership, and describe fully any mortgages or other liens against animals. (1919, c. 62, s. 12; C. S., s. 4893; 1939, c. 272, s. 1.)

§ **106-335. State Veterinarian to carry out provisions of article; how moneys paid out.**—The State Veterinarian is authorized, himself or by his representative, to do all things specified in this article. All moneys authorized to be paid shall be paid from the State treasury on warrants approved by the auditor, and the State Treasurer is hereby authorized to make such payment. (1919, c. 62, s. 13; C. S., s. 4894.)

Part 5. Tuberculosis.

§ **106-336. Animals reacting to tuberculin test.**—All animals reacting to a tuberculin test applied by a qualified veterinarian shall be known as reactors and be forever considered as affected with tuberculosis. (1921, c. 177, s. 1; C. S., s. 4895(a).)

§ **106-337. Animals to be branded.**—All veterinarians who, either by clinical examination or by tuberculin test, find an animal affected with tuberculosis, shall, unless the animal is immediately slaughtered, properly brand said animal for identification on the left jaw with the letter "T," not less than two inches high, and promptly report the same to the State Veterinarian. (1921, c. 177, s. 2; C. S., s. 4895(b).)

§ **106-338. Quarantine; removal or sale; sale and use of milk.**—The owner or owners of an animal affected with tuberculosis shall keep said animal isolated and quarantined in such a manner as to prevent the spread of the disease to other animals or man. Said animals must not be moved from the place where quarantined or sold, or otherwise disposed of except upon permission of the State Veterinarian, and then only in accordance with his instructions. The milk from said animals must not be sold, and if used shall be first boiled or properly pasteurized. (1921, c. 177, s. 3; C. S., s. 4895(c).)

§ **106-339. Seller liable in civil action.**—Any person or persons who sell or otherwise dispose of to another an animal affected with tuberculosis shall be liable in a civil action to any person injured, and for any and all damages resulting therefrom. (1921, c. 177, s. 4; C. S., s. 4895(d).)

Cross Reference.—See §§ 106-403, 106-404.

§ **106-340. Responsibility of owner of premises where sale is made.**—When cattle are sold or otherwise disposed of in this State by a nonresident of this State, the person or persons on whose premises the cattle are sold or otherwise disposed of with his knowledge and consent shall be equally responsible for violation of this law and the regulations of the Department of Agriculture. (1921, c. 177, s. 5; C. S., s. 4895(e).)

§ **106-341. Sale of tuberculin.**—No person, firm, or corporation shall sell or distribute or administer tuberculin, or keep the same on hand for sale, distribution, or administration, except qualified veterinarians, licensed physicians, or licensed druggists, or others lawfully engaged in the sale of biological products. (1921, c. 177, s. 6; C. S., s. 4895(f).)

§ **106-342. Notice to owner of suspected animals; quarantine.**—When the State Veterinarian receives information, or has reason to believe that tuberculosis exists in any animal or animals, he shall promptly notify the owner or owners, and recommend that a tuberculin test be applied to said animals, that diseased animals shall be properly disposed of, and the premises disinfected under the supervision of the State Veterinarian, or his authorized representative. Should the owner or owners fail or refuse to comply with the said recommendations of the State Veterinarian within ten days after said notice, then the State Veterinarian shall quarantine said animals on the premises of the owner or owners. Said animals shall not be removed from the premises where quarantined and milk or other dairy products from same shall not be sold or otherwise disposed of. Said quarantine shall remain in effect until the said recommendations of the State Veterinarian have been complied with, and the quarantine canceled by the State Veterinarian. (1921, c. 177, s. 7; C. S., s. 4895(g).)

§ **106-343. Appropriations by counties; elections.**—The several boards of county commissioners in the State are hereby expressly authorized and empowered to make such appropriations from the general funds of their county as will enable them to cooperate effectively with the State and federal departments of agriculture in the eradication of tuberculosis in their respective counties: Provided, that if in ten days after said appropriation is voted, one fifth of the qualified voters of the county petition the board of commissioners to submit the question of tuberculosis eradication or no tuberculosis eradication to the voters of the county, said commissioners shall submit such questions to said voters. Said election shall be held and conducted under the rules and regulations provided for holding stock-law elections in §§ 68-16, 68-20 and 68-21. If at any such election a majority of the votes cast shall be in favor of said tuberculosis eradication, the said board shall record the result of the election upon its minutes, and cooperative tuberculosis eradication shall be taken up with the State and federal departments of agriculture. If, however, a majority of the votes cast shall be adverse, then said board shall make no appropriation. (1921, c. 177, s. 8; C. S., s. 4895(h).)

§ **106-344. Petition for election if commissioners refuse cooperation; order; effect.**—If the board of commissioners of any county should exercise their discretion and refuse to cooperate as set out in § 106-343, then if a petition is presented to said board by one fifth of the qualified voters of the county requesting that an election be held as provided in § 106-343 to determine the question of tuberculosis eradication in the county, the board of commissioners shall order said election to be held in the way provided in § 106-343, and if a majority of the votes cast at such election shall be in favor of tuberculosis eradication, then said board shall cooperate with the State and federal governments as herein provided. (1921, c. 177, s. 9; C. S., s. 4895(i).)

§ **106-345. Importation of cattle.** — Whenever a county board shall cooperate with the State and federal governments, whether with or without an election, no cattle except for immediate slaughter shall be brought into the county unless accompanied by a tuberculin test chart and health certificate issued by a qualified veterinarian. (1921, c. 177, s. 10; C. S., s. 4895(j).)

§ **106-346. Amount of appropriation.** — When cooperative tuberculosis eradication shall be taken up in any county as provided for in §§ 106-336 to 106-350, the county commissioners of such counties shall appropriate from the general county fund an amount sufficient to defray one half of the expense of said cooperative tuberculosis eradication. (1921, c. 177, s. 11; C. S., s. 4895(k).)

§ **106-347. Qualified veterinarian.** — The words "qualified veterinarian" which appear in §§ 106-336 to 106-350 shall be construed to mean a veterinarian approved by the State Veterinarian and the chief of the United States Bureau of Animal Industry for the tuberculin testing of cattle intended for interstate shipment. (1921, c. 177, s. 12; C. S., s. 4895(l).)

§ **106-348. Rules and regulations.**—The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to control and eradicate tuberculosis. (1921, c. 177, s. 13; C. S., s. 4895(m).)

§ **106-349. Violation of law a misdemeanor.** — Any person or persons who shall violate any provision set forth in §§ 106-336 to 106-350, or any rule or regulation duly established by the State Board of Agriculture or any officer or inspector who shall willfully fail to comply with any provisions of this law, shall be guilty of a misdemeanor. (1921, c. 177, s. 14; C. S., s. 4895(n).)

§ **106-350. Sale of tubercular animal a felony.**—Any person or persons who shall willfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with tuberculosis without permission as provided for in § 106-338 shall be guilty of a felony, and punishable by imprisonment of not less than one year or not more than five years in the State prison. (1921, c. 177, s. 15; C. S., s. 4895(o).)

Part 6. Cattle Tick.

§ **106-351. Systematic dipping of cattle or horses.**—Systematic dipping of all cattle or horses infested with or exposed to the cattle tick, (Margaropus annulatus) shall be taken up in all counties or portions of counties that shall at any time be found partially or completely infested with the cattle tick (Margaropus annulatus) under the direction of the State Veterinarian acting under the authority as hereinafter provided in §§ 106-351 to 106-363 and as provided in all other laws and parts of laws of North Carolina and the livestock sanitary laws and regulations of the State Board of Agriculture not in conflict with §§ 106-351 to 106-363. (1923, c. 146, s. 1; C. S., s. 4895(p).)

Editor's Note.—It is said in 1 N.C.L. Rev. 301, that this statute reinforces §§ 106-22 and 106-306.

§ 106-352. Counties not embraced in quarantine zones. — If it shall be determined by the State Veterinarian or an authorized quarantine inspector, that any county or counties shall be partially or completely infested with the cattle tick (Margaropus annulatus), the county commissioners of said counties which are partially or completely infested with the cattle tick (Margaropus annulatus) shall immediately take up the work of systematic tick eradication as hereafter provided and continue same until the cattle tick (Margaropus annulatus) is completely eradicated and notice in writing of same is given by the State Veterinarian. (1923, c. 146, s. 3; C. S., s. 4895(r).)

§ 106-353. Dipping vats; counties to provide; cost.—The county commissioners of the aforesaid counties shall provide such numbers of dipping vats as may be fixed by the State Veterinarian or his authorized representative, and provide the proper chemicals and other materials necessary to be used in the work of systematic tick eradication in such counties, which shall begin on said dates and continue until the cattle tick (Margaropus annulatus) is completely eradicated and notice in writing of same is given by the State Veterinarian. The cost of said vats and chemicals, or any other expense incurred in carrying out the provisions of §§ 106-351 to 106-363, except §§ 106-354 and 106-358, shall be paid out of the general county fund. (1923, c. 146, s. 4; C. S., s. 4895(s).)

§ 106-354. Local State inspectors; commissioned as quarantine inspectors; salaries, etc. — The State Veterinarian shall appoint the necessary number of local State inspectors to assist in systematic tick eradication, who shall be commissioned by the Commissioner of Agriculture as quarantine inspectors. The salaries of said inspectors shall be sufficient to insure the employment of competent men. If the service of any of said inspectors is not satisfactory to the State Veterinarian, his services shall be immediately discontinued and his commission canceled. (1923, c. 146, s. 5; C. S., s. 4895(t); 1925, c. 275, s. 6.)

§ 106-355. Enforcement of compliance with law.—If the county commissioners shall fail, refuse or neglect to comply with the provisions of §§ 106-351 to 106-363, the State Veterinarian shall apply to any court of competent jurisdiction for a writ of mandamus, or shall institute such other proceedings as may be necessary and proper to compel such county commissioners to comply with the provisions of §§ 106-351 to 106-363. (1923, c. 146, s. 6; C. S., s. 4895(u).)

§ 106-356. Owners of stock to have same dipped; supervision of dipping; dipping period.—Any person or persons, firms or corporations, owning or having in charge any cattle, horses or mules in any county where tick eradication shall be taken up, or is in progress under existing laws, shall, on notification by any quarantine inspector to do so, have such cattle, horses or mules dipped regularly every fourteen days in a vat properly charged with arsenical solution as recommended by the United States Bureau of Animal Industry, under the supervision of said inspector at such time and place and in such manner as may be designated by the quarantine inspector. The dipping period shall be continued as long as may be required by the rules and regulations of the State Board of Agriculture, which shall be sufficient in number and length of time to completely destroy and eradicate all cattle ticks (Margaropus annulatus) in such county or counties. (1923, c. 146, s. 7; C. S., s. 4895(v).)

§ **106-357. Service of notice.**—Quarantine and dipping notice for cattle, horses and mules, the owner or owners of which cannot be found, shall be served by posting copy of such notice in not less than three public places within the county, one of which shall be placed at the county courthouse. Such posting shall be due and legal notice. (1923, c. 146, s. 8; C. S., s. 4895(w).)

§ **106-358. Cattle placed in quarantine; dipping at expense of owner.** — Cattle, horses or mules infested with or exposed to the cattle tick (Margaropus annulatus) the owner or owners of which, after five days' written notice from a quarantine inspector of such animals as is provided for in § 106-357, shall fail or refuse to dip such animals regularly every fourteen days in a vat properly charged with arsenical solution, as recommended by the United States Bureau of Animal Industry, under the supervision of a quarantine inspector, shall be placed in quarantine, dipped and cared for at the expense of the owner or owners, by the quarantine inspector. (1923, c. 146, s. 9; C. S., s. 4895(x).)

§ **106-359. Expense of dipping as lien on animals; enforcement of lien.**—Any expense incurred in the enforcement of § 106-358 and the cost of feeding and caring for animals while undergoing the process of tick eradication shall constitute a lien upon any animal, and should the owner or owners fail or refuse to pay said expense, after three days' notice, they shall be sold by the sheriff of the county after twenty days' advertising at the courthouse door and three other public places in the immediate neighborhood of the place at which the animal was taken up for the purpose of tick eradication. The said advertisement shall state therein the time and place of sale, which place shall be where the animal is confined. The sale shall be at public auction and to the highest bidder for cash. Out of the proceeds of the sale the sheriff shall pay the cost of publishing the notices of the tick eradication process, including dipping, cost of feeding and caring for the animals and cost of the sale, which shall include one dollar and fifty cents in the case of each sale to said sheriff. The surplus, if any, shall be paid to the owner of the animal if he can be ascertained. If he cannot be ascertained within thirty days after such sale, then the sheriff shall pay such surplus to the county treasurer for the benefit of the public school fund of the county: Provided, however, that if the owner of the animal shall, within twelve months after the fund is turned over to the county treasurer, as aforesaid, prove to the satisfaction of the board of county commissioners of the county that he was the owner of such animal, then, upon the order of said board, such surplus shall be refunded to the owner. (1923, c. 146, s. 10; C. S., s. 4895(y).)

§ **106-360. Duty of sheriff.** — It shall be the duty of the sheriff, in any county in which the work of tick eradication is in progress, to render all quarantine inspectors any assistance necessary in the enforcement of §§ 106-351 to 106-363 and the regulations of the North Carolina Department of Agriculture. If the sheriff of any county shall neglect, fail or refuse to render this assistance when so required, he shall be guilty of a misdemeanor and be punishable at the discretion of the court. (1923, c. 146, s. 11; C. S., s. 4895(z).)

§ **106-361. Rules and regulations.** — The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations that may hereafter be necessary to complete tick eradication in North Carolina. (1923, c. 146, s. 12; C. S., s. 4895(aa).)

§ **106-362. Penalty for violation.**—Any person, firm or corporation who shall violate any provisions set forth in §§ 106-351 to 106-363 or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall willfully fail to comply with any provision of §§ 106-351 to 106-363 shall be guilty of a misdemeanor. (1923, c. 146, s. 13; C. S., s. 4895(bb).)

§ **106-363. Damaging dipping vats a felony.** — Any person or persons who shall willfully damage or destroy by any means any vat erected, or in the process of being erected, as provided for tick eradication, shall be guilty of a felony and upon conviction shall be imprisoned not less than two years nor more than ten years in the State prison. (1923, c. 146, s. 14; C. S., s. 4895(cc).)

Part 7. Rabies.

§ **106-364. Definitions.**—The following definitions shall apply to §§ 106-364 to 106-387:

(1) The term "dog" shall mean a dog of either sex.

(2) The term "local health director" shall be understood to include district health officer, county health officer, city health officer, and city-county health officer, county superintendent of health, or any other administrative head of a local health department.

(3) The term "vaccination" shall be understood to mean the administration of antirabic vaccine approved by the United States Bureau of Animal Industry, the North Carolina State Department of Agriculture, and the North Carolina State Board of Health. (1935, c. 122, s. 1; 1949, c. 645, s. 1; 1953, c. 876, s. 1; 1957, c. 1357, s. 3.)

Editor's Note.—Session Laws 1953, cc. 120, 252, made all of the provisions of this part, §§ 106-364 through 106-387, applicable to Persons and Union counties, respectively.

Session Laws 1957, c. 277, made all the provisions of this part applicable to Edgecombe County.

§ **106-365. Vaccination of all dogs.**—In all counties where a campaign of vaccination is being conducted, it shall be the duty of the owner of each and every dog over four months of age to have same vaccinated against rabies annually, or at a time or times determined by the State Board of Health, but no more often than once in each calendar year in accordance with the provisions of §§ 106-364 to 106-387. All antirabic vaccine shall be administered by licensed veterinarians or by properly qualified laymen in accordance with the provisions of § 106-366. (1935, c. 122, s. 2; 1941, c. 259, s. 2; 1953, c. 876, s. 2.)

§ **106-366. Appointment and qualifications of rabies inspectors; preference to veterinarians.**—It shall be the duty of the local health director with the approval of the board of county commissioners of each county, and in those counties where a local health director is not employed it shall be the duty of the county board of commissioners to appoint a sufficient number of rabies inspectors to carry out the provisions of §§ 106-364 to 106-387. In the appointment of rabies inspectors, preference shall be given to licensed veterinarians. No person shall be appointed as a rabies inspector unless such person is of good moral character and by training and experience is qualified in the opinion of the local health director and the board of county commissioners to perform the duties required under §§ 106-364 to 106-387. (1935, c. 122, s. 3; 1941, c. 259, s. 3; 1953, c. 876, s. 3; 1957, c. 1357, s. 4.)

Local Modification.—Davie: 1937, c. 255.

§ **106-367. Time of vaccination.**—The vaccination of all dogs shall begin on February 1 and shall be completed within ninety (90) days of that date. Provided, however, that the local health director, in those counties having a local health director and the county board of commissioners in those counties which do not have a local health director, may require the vaccination of all dogs within any area of said counties when such vaccination is deemed necessary for the control of rabies. (1935, c. 122, s. 4; 1949, c. 645, s. 2; 1953, c. 876, s. 4; 1957, c. 1357, s. 5.)

§ **106-368. Publication of notice of date of vaccination; duty of owner.** — The rabies inspector shall give due notice through the newspaper of the county and by posting notice at the courthouse and at one or more public places in each township of the county of the date on which the vaccination of all dogs shall be started in a county and it shall be the duty of the owner of every dog in said county to have said dog, or dogs, at either of two or more points in the township for the purpose of having same vaccinated, said points and date to be designated by the rabies inspector. (1935, c. 122, s. 5; 1941, c. 259, s. 4.)

§ **106-369. Vaccine and cost; metal tag to be worn by dog; certificate of vaccination.**—The State Department of Agriculture may purchase proper rabies vaccine and a uniform metal tag serially numbered, suitably lettered and showing the year issued, provided for in §§ 106-364 to 106-387, for resale to the rabies inspectors. The resale price shall include State cost of the vaccine, metal tags, handling and postage. At the time of vaccination the rabies inspector shall give to the owner or person in charge of each dog vaccinated a numbered metal tag together with a certificate. The certificate shall be issued in duplicate, the rabies inspector to retain a copy. The metal tag shall be worn by the dog at all times. (1935, c. 122, s. 6; 1941, c. 259, s. 5; 1959, c. 352.)

Local Modification. — Orange: 1953, c. 367, s. 5.

§ **106-370. Notice to sheriff of each county and his duty to assist.**—The rabies inspector shall notify the sheriff of the county of the date when the vaccination of dogs in said county shall begin and it shall be the duty of the sheriff and his deputies to assist the rabies inspector in the enforcement of §§ 106-364 to 106-387. (1935, c. 122, s. 7; 1941, c. 259, s. 6.)

§ **106-371. Canvass of dogs not wearing metal tags; notice to owners to have dogs vaccinated; killing of ownerless dogs.**—When the rabies inspector has carried out the provisions of §§ 106-364 to 106-387 as to § 106-368 in all townships of the county, it shall be the duty of the sheriff with the assistance of the rabies inspector to make a thorough canvass of the county and frequently thereafter to determine if there are any dogs that are not wearing the metal tag provided for in § 106-369. If such dogs are found the sheriff shall notify the owner to have same vaccinated by a rabies inspector and to produce the certificate provided for in § 106-369, within three days. If the owner shall fail to do this he shall be prosecuted in accordance with the provisions of §§ 106-364 to 106-387. If the owner of a dog not wearing a tag cannot be found it shall be the duty of said officer to destroy said dog. (1935, c. 122, s. 8.)

Local Modification. — Forsyth: 1949, c. 622, s. 2; Guilford: 1949, c. 462, s. 1; Mecklenburg: 1957, c. 904.

§ **106-372. Fee for vaccination; penalty for late vaccination.**—The rabies inspector shall collect from the owner of each dog vaccinated a vaccination fee in an amount if any to be fixed by the county board of commissioners. Any owner who fails to have his dog vaccinated at the time provided in § 106-368 shall have said dog vaccinated in accordance with § 106-371 and shall pay the rabies inspector an additional sum of one dollar ($1.00) to be retained by him for each dog treated. (1935, c. 122, s. 9; 1941, c. 259, s. 7; 1949, c. 645, s. 5; 1953, c. 876, s. 5; 1959, c.139.)

Local Modification. — Guilford: 1949, c. 462, s. 2; Washington: 1955, c. 353; Wilson: 1941, c. 259, s. 7.

§ 106-372.1: Repealed by Session Laws 1953, c. 876, s. 6.

§ 106-373. Vaccination of dogs after vaccination period.—It shall be the duty of the owner of any dog born after February 1 in any year or any dog which shall not be four months old on February 1 in any year to take the dog, when four months of age, or within 30 days thereafter to a licensed veterinarian or to a rabies inspector and have it vaccinated against rabies. (1935, c. 122, s. 10; c. 344; 1941, c. 259, s. 8; 1949, c. 645, s. 6; 1953, c. 876, s. 7.)

Local Modification. — Wilson: 1941, c. 259, s. 8.

§ 106-374. Vaccination and confinement of dogs brought into State.—All dogs shipped or otherwise brought into this State, except for exhibition purposes where the dogs are confined and not permitted to run at large, shall be securely confined and vaccinated within one week after entry, and shall remain confined for two additional weeks after vaccination unless accompanied by a certificate issued by a qualified veterinarian showing that said dog is apparently free from rabies and has not been exposed to same and that said dog has received a proper dose of rabies vaccine not more than six months prior to the date of issuing the certificate. (1935, c. 122, s. 11.)

§ 106-375. Quarantine of districts infected with rabies.—The local health director and, in those counties where local health directors are not employed, the county board of commissioners may declare quarantine against rabies in any district when in his or its judgment this disease exists to the extent that the lives of persons are endangered, and in that event each and every dog in such district shall be confined on the premises of the owner or in a veterinary hospital; provided, that a dog may be permitted to leave the premises of the owner if on leash or under the control and in the sight of its owner or other responsible person at all times. (1935, c. 122, s. 12; 1941, c. 259, s. 9; 1949, c. 645, s. 3; 1953, c. 876, s. 8; 1957, c. 1357, s. 8.)

Local Modification.—Cleveland: 1955, c. 306.

§ 106-376. Killing stray dogs in quarantine districts.—When quarantine has been established, and dogs continue to run at large, uncontrolled by owners or persons responsible for their control, any peace officer shall have the right after reasonable effort has been made on the part of the officers to apprehend the dogs running at large to kill said dogs and properly dispose of their bodies. (1935, c. 122, s. 13; 1953, c. 876, s. 9.)

§ 106-377. Infected dogs to be killed; protection of dogs vaccinated.—Every dog known to have been bitten by another animal which is known or proved to be rabid shall be killed immediately by its owner or by a peace officer; provided, that any dog which has been vaccinated in accordance with §§ 106-364 to 106-387 at least three weeks before being bitten but not more than one year before, shall be closely confined for ninety (90) days. At the end of the period of confinement, such dog shall be released if declared free of rabies by a rabies inspector or a licensed graduate veterinarian. If during the period of confinement such dog develops rabies, as determined by a licensed graduate veterinarian, it shall be the duty of the owner to have such animal killed, and properly disposed of, subject to the provisions of § 106-379. (1935, c. 122, s. 14; 1953, c. 876, s. 10.)

§ 106-378. Confinement of suspected animals.—Every person who owns or has possession of an animal which is suspected of having rabies shall confine such animal at once in some secure place for at least ten (10) days, before such animal shall be released. (1935, c. 122, s. 15; c. 344; 1941, c. 259, s. 10; 1953, c. 876, s. 11.)

§ **106-379. Animals having rabies to be killed; heads ordered to a laboratory.**—Every rabid animal, after rabies has been diagnosed by a licensed graduate veterinarian, shall be killed at once by its owner or by a peace officer; except, that if the animal has bitten a human being, such animal shall be confined under the supervision of a licensed graduate veterinarian until the death of the animal. All heads of animals suspected of dying of rabies shall be sent immediately to a laboratory approved by the State Board of Health. Care shall be taken not to damage the brain and to submit such specimens in a manner approved by the State Laboratory of Hygiene. (1935, c. 122, s. 16; 1953, c. 876, s. 12.)

§ **106-380. Notice to local health director when person bitten; confinement of dog; reports by physicians.** — When a person has been bitten by an animal having rabies or suspected of having rabies, it shall be the duty of such person, or his parent or guardian if such person is a minor, and the person owning such animal or having the same in his possession or under his control, to notify the local health director immediately and give their names and addresses; and the owner or person having such animal in his possession or under his control shall immediately securely confine it for 10 days at the expense of the owner in such place as may be designated by the local health director. It shall be the duty of every physician, after his first professional attendance upon a person bitten by any animal having rabies or suspected of having rabies, to report to the local health director the name, age and sex of the person so bitten, and precise location of the bite wound, within 24 hours after first having knowledge that the person was bitten. (1935, c. 122, s. 17; 1941, c. 259, s. 11; 1953, c. 876, s. 13; 1957, c. 1357, s. 9.)

§ **106-381. Confinement or leashing of vicious animals.** — When an animal becomes vicious or a menace to the public health, the owner of such animal or person harboring such animal shall not permit such animal to leave the premises on which kept unless on leash in the care of a responsible person. (1935, c. 122, s. 18; 1953, c. 876, s. 14.)

§ **106-382. Administration of law in cities and larger towns; cooperation with sheriffs.**—In towns or cities with a population of five thousand (5000), or more, the responsibility for assistance in the enforcement of §§ 106-364 to 106-387 shall be with the public safety or police department of said town or city, and this department shall be subject to the same rules, regulations and penalties as the sheriffs of the several counties; and it shall further be the duty of the public safety or police department in towns or cities assisting in the enforcement of §§ 106-364 to 106-387 to cooperate with the sheriff of any county in the carrying out of the provisions of §§ 106-364 to 106-387 for a distance of one mile beyond the city limits. (1935, c. 122, s. 19.)

§ **106-383. Regulation of content of vaccine; doses.**—Rabies vaccine intended for use on dogs and other animals shall not be shipped or otherwise brought into North Carolina, used, sold, or offered for sale unless said rabies vaccine shall be approved by the U.S. Bureau of Animal Industry, North Carolina State Department of Agriculture and North Carolina State Board of Health. Rabies vaccine shall be given in doses recommended by the manufacturer of the vaccine. (1935, c. 122, s. 20; 1953, c. 876, s. 15.)

§ **106-384. Law declared additional to other laws on subject.**—The provisions of §§ 106-364 to 106-387 shall not be construed to repeal or change any laws heretofore enacted but shall be in addition thereto except insofar as said laws heretofore enacted and enforced shall actually conflict with the provisions of §§ 106-364 to 106-387 and prevent the proper enforcement of said provisions. And the said laws enacted and now in force shall remain in full force and effect except as they do actually conflict with the enforcement of the provisions of §§ 106-364 to 106-387 in which §§ 106-364 to 106-387 and the provisions thereof shall prevail. (1935, c. 122, s. 21.)

§ **106-385. Violation made misdemeanor.**—Any person who shall violate any of the provisions of §§ 106-364 to 106-387 or any provision of any regulation of quarantine established thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than ten ($10.00) dollars or more than fifty ($50.00) dollars, or to imprisonment of not less than ten (10) days or more than thirty (30) days in the discretion of the court. (1935, c. 122, s. 23.)

Local Modification. — Orange: 1953, c. 367, s. 5.

§ **106-386. Present dog tax limited.**—No county, city or town shall levy any additional taxes on dogs other than the tax now levied. (1935, c. 122, s. 24.)

§ **106-387. Disposition of funds.**—Any money collected under the provisions of §§ 106-364 to 106-387 in excess of the cost of operations and enforcement shall become a part of the agricultural fund of the State of North Carolina. (1935, c. 190.)

Part 8. Bang's Disease.

§ **106-388. Animals affected with, or exposed to Bang's disease, declared subject to quarantine, etc.**—It is hereby declared that the disease of animals known as Bang's disease, contagious abortion, abortion disease, bovine infectious abortion, or Bang's bacillus disease, if of a contagious and infectious character, and animals, affected with, or exposed to, or suspected of being carriers of said disease shall be subject to quarantine and the rules and regulations of the Department of Agriculture. (1937, c. 175, s. 1.)

§ **106-389. "Bang's disease" defined; cooperation with the federal Department of Agriculture.** — Bang's disease shall mean the disease wherein an animal is infected with the Bang's bacillus, irrespective of the occurrence or absence of an abortion. An animal shall be declared infected with Bang's disease if it reacts to a seriological test, or if the Bang's bacillus has been found in the body or its secretions or discharges. The State Veterinarian is hereby authorized and empowered to set up a program for the vaccination of calves between the ages of four and eight months, and older cattle, with Brucella vaccine in accordance with the recommendations of the United States Bureau of Animal Industry. Such vaccination shall be done under rules and regulations promulgated by the Board of Agriculture. The Commissioner of Agriculture may permit the sale of valuable animals that have reacted to an official Bang's test or are suspicious to same, provided such animals go direct to infected herds that have been vaccinated with approved Brucella vaccine, as provided for in this section, and are under quarantine in accordance with the law and regulations covering. Such approved vaccinated animals shall be permanently identified by tattooing or other methods approved by the Commissioner of Agriculture and no indemnity shall be paid on any such vaccinated animal. It shall be the duty of the State Veterinarian to test all animals vaccinated with approved Brucella vaccine twelve months after the date of vaccination and regularly thereafter. All such vaccinated animals that show a positive reaction to an official Bang's test eighteen months or more after vaccination shall be considered as affected with Bang's disease and shall be branded with the letter "B" in accordance with the law covering. It shall be unlawful to sell, offer for sale, distribute or use Brucella vaccine or any other product containing living Bang's organisms, except as provided for in this section.

The control and eradication of Bang's disease in the herds of the State shall be conducted as far as funds of the Board of Agriculture will permit, and in accordance with the rules and regulations made by the said Board. The Board of Agriculture is hereby authorized to cooperate with the United States Department of Agriculture in the control and eradication of Bang's disease. (1937, c. 175, s. 2; 1945, c. 462, s. 1; 1953, c. 1119.)

§ **106-390. Blood samples; diseased animals to be branded and quarantined; sale, etc.**—All blood samples for a Bang's disease test shall be drawn by a qualified veterinarian whose duty it shall be to brand all animals affected with Bang's disease with the letter "B" on the left hip or jaw, not less than three or more than four inches high, and to tag such animals with an approved cattle ear tag and report same to the State Veterinarian. Cattle affected with Bang's disease shall be quarantined on the owner's premises. No animal affected with Bang's disease shall be sold, traded or otherwise disposed of except for immediate slaughter, and it shall be the duty of the person disposing of such infected animals to see that they are promptly slaughtered and a written report of same is made to the State Veterinarian. All dairy and breeding cattle over six months of age offered or sold at public sale, except for immediate slaughter, shall be negative to a Bang's test made within thirty days prior to sale and approved by the State Veterinarian: Provided, however, the State Veterinarian is authorized to issue a written permit for public show or sale to the owners or authorized representatives of the owners of officially calfhood vaccinated heifers twenty-four (24) months of age or under with or without a blood test when such heifers originate directly from a herd not under quarantine or known to be infected with or exposed to Bang's disease and located in a certified Brucellosis free area or modified certified Brucellosis area. (1937, c. 175, s. 3; 1945, c. 462, s. 2; 1959, c. 1171; 1963, c. 489.)

Editor's Note.—The 1963 amendment rewrote the proviso at the end of the section.

§ **106-391. Civil liability of vendors.** — Any person or persons who knowingly sell or otherwise dispose of, to another, an animal affected with Bang's disease shall be liable in a civil action to any person injured, and for any and all damages resulting therefrom. (1937, c. 175, s. 4.)

Cross Reference.—For similar section, see § 106-339.

§ **106-392. Sales by nonresidents.** — When cattle are sold, or otherwise disposed of, in this State, by a nonresident of this State, the person or persons on whose premises the cattle are sold, or otherwise disposed of, with his knowledge and consent, shall be equally responsible for violations of §§ 106-388 to 106-399 and the regulations of the Department of Agriculture. (1937, c. 175, s. 5.)

§ **106-393. Duties of State Veterinarian; quarantine for failure to comply with recommendations.** — When the State Veterinarian receives information, or has reason to believe that Bang's disease exists in any animal or animals, he shall promptly notify the owner or owners, and recommend that a test be applied to said animals that diseased animals shall be properly disposed of, and the premises disinfected under the supervision of the State Veterinarian or his authorized representative. Should the owner or owners fail or refuse to comply with the said recommendations of the State Veterinarian within ten days after said notice, then the State Veterinarian shall quarantine said animals on the premises of the owner or owners. Said animals shall not be removed from the premises where quarantined. Said quarantine shall remain in effect until the said recommendations of the State Veterinarian have been complied with and the quarantine is canceled by the State Veterinarian. (1937, c. 175, s. 6.)

§ **106-394. Cooperation of county boards of commissioners.**—The several boards of county commissioners in the State are hereby expressly authorized and empowered within their discretion to make such appropriations from the general funds of their county as will enable them to cooperate effectively with the State and federal departments of agriculture in the eradication of Bang's disease in their respective counties. (1937, c. 175, s. 7.)

§ **106-395. Compulsory testing.**—Whenever a county board shall cooperate with the State and federal governments, as provided for in §§ 106-388 to 106-399, the testing of all cattle in said county shall become compulsory, and it shall be the duty of the cattle owners to give such assistance as may be necessary for the proper testing of said cattle, and no cattle, except for immediate slaughter, shall be brought into the county unless accompanied by a proper test chart and health certificate issued by a qualified veterinarian, showing that the cattle have passed a proper test for Bang's disease. (1937, c. 175, s. 8.)

§ **106-396. "Qualified veterinarian" defined.**—The words "qualified veterinarian" shall be construed to mean a veterinarian approved by the State Veterinarian and chief of the United States Bureau of Animal Industry for the testing of cattle intended for interstate shipment. (1937, c. 175, s. 9.)

§ **106-397. Authority to promulgate and enforce rules and regulations.**—The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations as may be necessary to carry out the provisions of §§ 106-388 to 106-399 and for the effective control and eradication of Bang's disease. (1937, c. 175, s. 10.)

§ **106-398. Violation made misdemeanor.**—Any person or persons who shall violate any provision set forth in §§ 106-388 to 106-399, or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall willfully fail to comply with any provisions of §§ 106-388 to 106-399, shall be guilty of a misdemeanor. (1937, c. 175, s. 11.)

§ **106-399. Punishment for sales of animals known to be infected.**—Any person or persons who shall willfully and knowingly sell or otherwise dispose of any animal or animals known to be affected with Bang's disease, except as provided for in §§ 106-388 to 106-399, shall be guilty of a misdemeanor, and punishable by a fine of not less than fifty dollars and not more than two hundred dollars, or imprisoned for a term of not less than thirty days or more than two years. (1937, c. 175, s. 12.)

Part 9. Control of Livestock Diseases.

§ **106-400. Permit from State Veterinarian for sale, transportation, etc., of animals affected with disease.**—No person or persons shall sell, trade, offer for sale or trade, or transport by truck or other conveyance on any public road or other public place within the State any animal or animals affected with a contagious or infectious disease, except upon a written permit of the State Veterinarian and in accordance with the provisions of said permit. The State Veterinarian, or his authorized representative, is hereby empowered to examine any livestock that are being transported or moved, sold, traded, offered for sale or trade on any highway or other public place within the State for the purpose of determining if said animals are affected with a contagious or infectious disease, or are being transported or offered for sale or trade in violation of §§ 106-400 to 106-405. If the animals are found to be diseased or are being moved, sold, offered for sale or trade in violation of §§ 106-400 to 106-405, they shall be placed under quarantine in accordance with the provisions of §§ 106-400 to 106-405 in a place to be determined by the State Veterinarian or his authorized representative. Any animal or animals shipped or otherwise moved into this

State in violation of federal laws or regulations shall be handled in accordance with the provisions of §§ 106-400 to 106-405. (1939, c. 360, s. 1.)

Cross Reference.—See § 106-307.4.

§ **106-401. Notice of quarantine; removal of quarantine.**—The State Veterinarian, or his authorized representative, is hereby authorized to quarantine any animal or animals affected with, exposed to, or injected with any material capable of producing a contagious or infectious disease, and to give public notice of such quarantine by posting or placarding the entrance to or any part of the premises on which the animals are held with a suitable quarantine sign, said animal or animals to be maintained by the owner or person in charge, as provided for in §§ 106-400 to 106-405, at the owner's expense. No animal or animals under quarantine shall be moved from the premises except upon a written permit from the State Veterinarian or his authorized representative. Said quarantine shall remain in effect until canceled by official notice from the State Veterinarian and shall not be canceled until the sick and dead animals have been properly disposed of and the premises have been properly cleaned and disinfected. (1939, c. 360, s. 2.)

Cross Reference.—See § 106-307.3.

§ **106-402. Confinement and isolation of diseased animals required.**—Any animal or animals affected with or exposed to a contagious or infectious disease shall be confined by the owner or person in charge of said animal or animals in such a manner, by penning or otherwise securing and actually isolating same from the approach or contact with other animals not so affected; they shall not have access to any ditch, canal, branch, creek, river, or other watercourse which passes beyond the premises of the owner or person in charge of said animals, or to any public road, or to the premises of any other person. (1939, c. 360, s. 3.)

Cross Reference.—See § 106-311.

§ **106-403. Disposition of dead animals and fowls.**—It shall be the duty of the owner or person in charge of any animals or fowls that die from any cause and the owner, lessee, or person in charge of any land upon which any animals or fowls die, to bury the same to a depth of at least three feet beneath the surface of the ground, or to completely burn said animals or fowls, within twenty-four hours after the death of said animals or fowls, or to otherwise dispose of the same in a manner approved by the State Veterinarian. It shall be unlawful for any person to remove the carcasses of dead animals or fowls from his premises to the premises of any other person without the written permission of the person having charge of such premises and without burying said carcasses as above provided. (1919, c. 36; C. S., s. 4488; 1927, c. 2; 1939, c. 360, s. 4.)

§ **106-404. Animals affected with glanders to be killed.**—If the owner of any animal having the glanders or farcy shall omit or refuse, upon discovery or knowledge of its condition, to deprive the same of life at once, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1881, c. 368, s. 8; Code, s. 2489; 1891, c. 65; Rev., s. 3296; C. S., s. 4489.)

Cross Reference.—As to compensation for killing diseased animals, see § 106-323 et seq.

§ **106-405. Violation made misdemeanor.**—Any person or persons who shall knowingly and willfully violate any provisions of §§ 106-400 to 106-405 shall be guilty of a misdemeanor. (1939, c. 360, s. 6.)

Local Modification. — Macon: 1939, c. 360, s. 7.

Part 10. Feeding Garbage to Swine.

§ **106-405.1. Definitions.**—For the purpose of this part, the following words shall have the meanings ascribed to them in this section:

(1) "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of foods including animal carcasses, parts of animal carcasses, offal or contents of offal.

(2) "Person" means the State, any municipality, political subdivision, institution, public or private corporation, individual, partnership, or any other entity. (1953, c. 720, s. 1.)

§ **106-405.2. Permit for feeding garbage to swine.**—(a) No person shall feed garbage to swine without first securing a permit therefor from the North Carolina Commissioner of Agriculture or his authorized agent. Such permits shall be secured within 90 days after June 9, 1953, and shall be renewed on or before the first day of July of each year.

(b) No permit shall be issued or renewed for garbage feeding under this part in any county or other subdivision in which local regulations to prohibit garbage feeding are in effect.

(c) This part shall not apply to any individual who feeds only his own household garbage to swine: Provided, that any such swine sold or disposed of shall be sold or disposed of in accordance with rules and regulations promulgated by the State Board of Agriculture. (1953, c. 720, s. 2.)

§ **106-405.3. Application for permit.**—(a) Any person desiring to obtain a permit to feed garbage to swine shall make written application therefor to the North Carolina Commissioner of Agriculture in accordance with requirements of this part.

(b) The Commissioner of Agriculture is hereby authorized to collect a fee of $1.00 for each permit issued to a garbage feeder under the provisions of this part. The fees provided for in this part shall be used exclusively for the enforcement of this part.

(c) No permit fee shall be collected from any federal, State, county, or municipal institution. (1953, c. 720, s. 3.)

§ **106-405.4. Revocation of permits.**—Upon determination that any person, having a permit issued under this part or one who has applied for a permit hereunder, has violated or failed to comply with any provisions of this part, the North Carolina Commissioner of Agriculture may revoke such permit or refuse to issue a permit to an applicant therefor. (1953, c. 720, s. 4.)

§ **106-405.5. Sanitation.**—Premises on which garbage feeding is permitted under this part must be equipped with feeding platforms constructed of concrete, wood or other impervious material, or troughs of such material of sufficient size to accommodate the swine herd. Premises must be kept free of collections of unused garbage and waste materials. Sanitation, rat and fly control measures must be practiced as a further means of the prevention of the spread of diseases. (1953, c. 720, s. 5.)

§ **106-405.6. Cooking or other treatment.**—All garbage, regardless of previous processing, shall, before being fed to swine, be thoroughly heated to at least 212 degrees F. for at least thirty minutes unless treated in some other manner which shall be approved in writing by the North Carolina Commissioner of Agriculture as being equally effective for the proctection of animal and human health. (1953, c. 720, s. 6.)

§ **106-405.7. Inspection and investigation; maintenance of records.**—(a) Any authorized representative of the North Carolina Commissioner of

Agriculture shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the proper treatment of garbage to be fed to swine, sanitation of the premises and health of the animals.

(b) Garbage feeders shall keep a complete permanent record relating to the operation of equipment and their procedure of treating garbage, and also from whom all swine are received and to whom sold for immediate slaughter. Such record is to be available to the Commissioner of Agriculture or his authorized representative. (1953, c. 720, s. 7.)

§ **106-405.8. Enforcement of part; rules and regulations.**—The North Carolina Commissioner of Agriculture is hereby charged with the administration and enforcement of the provisions of this part. The North Carolina Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to cooperate with the United States Bureau of Animal Industry in the control and eradication of vesicular exanthema.

The Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations that may hereafter be necessary to carry out the provisions of this part. (1953, c. 720, s. 8.)

§ **106-405.9. Penalties.**—Any person, firm or corporation who shall knowingly violate any provisions set forth in this part or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall wilfully fail to comply with any provisions of this part shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court. Such person, firm, or corporation may be enjoined from continuing such violation. (1953, c. 720, s. 9.)

Article 35.

Public Livestock Markets.

§ **106-406. Permits for public livestock markets; restraining order for certain violations.**—Any person, firm or corporation operating a public livestock market within the State of North Carolina shall be required to obtain from the Commissioner of Agriculture a permit authorizing the operation of such market. Application for a permit shall be made on forms furnished by the Commissioner of Agriculture and shall show full name and address of all persons having financial interest in the market, name of the officers, manager and person in charge, the name under which the market will operate, location, and facilities for holding and segregating animals, and such other information as the Commissioner of Agriculture may require. Upon the filing of the application on the forms prescribed and the giving of bond as required in this article, the Commissioner of Agriculture shall issue and deliver to the applicant a permit authorizing the operation of the market, which permit may be revoked by the State Board of Agriculture for violation of the provisions of this article, or the rules and regulations promulgated thereunder, after the owner or operator of the livestock market shall have been given ten days' notice of the alleged violation and an opportunity to be heard relative thereto by the State Board of Agriculture.

If any person, firm, or corporation shall operate a public livestock market in violation of the provisions of this article, or the rules and regulations promulgated by the State Board of Agriculture, or shall fail to comply with the provisions of the article, or rules and regulations promulgated thereunder, a temporary restraining order may be issued by a judge of the superior court upon application by the Commissioner of Agriculture, and the judge of the superior court shall have the same power and the authority as in any other injunction proceeding, and the defendant shall have the same rights, including the right of appeal, as in any other injunction proceeding heard before the superior court. (1941, c. 263, s. 1; 1943, c. 724, s. 1.)

Cited in State v. Lovelace, 228 N.C. 186, 45 S.E.2d 48 (1947).

§ 106-407. Bonds required of operators; exemptions as to permits and health requirements.—The Commissioner of Agriculture shall require the operator of said livestock market to furnish a bond acceptable to the Commissioner of Agriculture of two thousand dollars ($2,000.00) to secure the performance of all obligations incident to the operation of the livestock market, including prompt payment of proceeds for purchase or sale of livestock: Provided, that said bond shall not be required by a livestock market association organized under a law which requires such association to be bonded or a market operating under the Federal Packers and Stockyard Act. A livestock market where horses and mules are sold exclusively, or a market that sells only finished livestock that are shipped for immediate slaughter, shall be exempt from the health requirements of this article, as set forth in §§ 106-409 and 106-410 and shall not be required to secure a permit as provided for in § 106-406. (1941, c. 263, s. 2.)

§ 106-408. Marketing facilities prescribed; records of purchases and sales; time of sales; notice.—All public livestock markets operating under this article shall have proper facilities for handling livestock, which shall include proper pens for holding and segregating animals, properly protected from weather; an adequate water supply; satisfactory scales if animals are bought, sold, or exchanged by weight, said scales to be approved by the North Carolina Division of Weights and Measures; and such other equipment as the Commissioner of Agriculture may deem necessary for the proper operation of the market. The premises, including yards, pens, alleys, and chutes shall be cleaned and disinfected at least weekly in accordance with the regulations issued in accordance with this article. Said market shall keep a complete permanent record showing from whom all animals are received and to whom sold, the weight, if purchased or sold by weight, the price paid and the price received, such record to be available to the Commissioner of Agriculture or his authorized representative.

The sales of all livestock at livestock auction markets shall start promptly at 1:00 P.M. on each sales day and the selling of livestock shall be continuous until all livestock is sold; provided, however, any livestock sale requiring no more than four hours selling time may begin sales at 2:00 P.M., but such sales must be concluded not later than 6:00 P.M.

All public livestock market operators operating under this article who shall begin sales later than 1:00 P.M., as provided in this section, shall post notice of the sales starting time in a conspicuous place on the market premises and shall notify the State Veterinarian in writing at least ten days prior to the initial sale. In the event of subsequent changes in starting times, notice shall be posted on the premises and notification given to the State Veterinarian in the same manner as set out above. (1941, c. 263, s. 3; 1949, c. 997, s. 1; 1961, c. 275, s. 1.)

Local Modification.—Harnett: 1955, c. 753; Lee: 1957, c. 772; Robeson: 1951, c. 160; 1961, c. 275, s. 1(a).

§ 106-409. Health certificates for cattle removed for nonslaughter purposes; identification; information form; bill of sale.—No cattle except those for immediate slaughter shall be removed from any public livestock market unless they are accompanied by a health certificate issued by a qualified veterinarian, said veterinarian to be approved or provided by the Commissioner of Agriculture showing that such animals are apparently healthy and come directly from a herd all of which animals in the herd have passed a negative test for

Bang's disease within twelve months prior to the date of sale, or that said animal or animals have passed a satisfactory test for Bang's disease made within thirty days prior to sale and such other tests and vaccinations as the Commissioner of Agriculture may require. Every such animal shall be identified by an approved numbered ear tag and description. A copy of said certificate shall be kept on file by the market. No test for Bang's disease shall be required on steers and all cattle less than six months of age, but such animals shall be subject to all other provisions of this article. All cattle removed from any public livestock market for immediate slaughter shall be identified in an approved manner and the person removing same shall sign a form in duplicate showing number of cattle, their description, where same are to be slaughtered or resold for slaughter. Said cattle shall be resold only to a recognized slaughter plant or the agent of same, or to a person, firm or corporation that handles cattle for immediate slaughter only, and said cattle shall be used for immediate slaughter only. No market operator shall allow the removal of any cattle from a market in violation of this section. (1941, c. 263, s. 4; 1943, c. 724, s. 2; 1949, c. 997, s. 2.)

Applied in Draughon v. Maddox, 237 N.C. 742, 75 S.E.2d 917 (1953).

§ 106-410. Health certificates for swine removed for nonslaughter purposes; identification; information form; bill of sale.—No swine, except those for immediate slaughter, shall be removed from any public livestock market unless they are accompanied by a health certificate issued by a qualified veterinarian, said veterinarian to be approved or provided by the Commissioner of Agriculture, showing that such animals are apparently healthy and that they have received a proper dose of anti-hog-cholera serum not more than twenty-one days or a proper dose of serum and virus not less than thirty days prior to the date of sale, and such other vaccinations as may be required by the Commissioner of Agriculture. All such swine shall be identified by an approved, numbered ear tag and descriptions which shall be entered on the health certificate. A copy of said certificate shall be kept on file by the market. All swine removed from any public livestock market for immediate slaughter shall be identified by a distinguishing paint mark or by other methods approved by the Commissioner of Agriculture and the person removing same shall sign a form in duplicate showing number of hogs, their description, where same are to be slaughtered or resold for slaughter. Said swine shall be resold only to a recognized slaughter plant or the agent of same, or to a person, firm or corporation that handles swine for immediate slaughter only and said swine shall be used for immediate slaughter only. No market operator shall allow the removal of any swine from a market in violation of this section.

Provided, however, that the Commissioner of Agriculture may permit swine to be shipped out of the State of North Carolina, without vaccination and under the same conditions as if said swine were being delivered for immediate slaughter, for immediate delivery to holding or feeding lots in any other state when he determines that said holding or feeding lots are being operated in compliance with the laws of said state and the rules and regulations promulgated thereunder. (1941, c. 263, s. 5; 1943, c. 724, s. 3; 1949, c. 997, ss. 3, 4.)

§ 106-411. Regulation of use of livestock removed from market; swine shipped out of State.—Any person or persons who shall remove from a public livestock market any cattle, swine, or other livestock for immediate slaughter shall use them for immediate slaughter only or resale for slaughter in accordance with this article and the regulations issued in accordance with same. The owner of said animals shall be charged with the responsibility of having said animals slaughtered and shall be liable for all damages resulting from diverting them to other uses or failing to have them slaughtered, in addition to the criminal liability imposed in this article.

Provided this section shall not apply to swine shipped out of this State to holding or feeding lots as provided for in G.S. 106-410. (1941, c. 263, s. 6; 1943, c. 724, s. 4; 1949, c. 997, s. 5.)

§ 106-412. Admission of animals to market; quarantine of diseased animals; sale prohibited; regulation of trucks, etc.—No animal known to be affected with a contagious or infectious disease shall be received or admitted into any public livestock market except upon special permit issued by the Commissioner of Agriculture or his authorized representative. All animals affected with or exposed to any contagious or infectious disease of animals or any animal that reacts to a test indicating the presence of such a disease, shall be quarantined separate and apart from healthy animals and shall not be sold, traded, or otherwise disposed of except upon permission of the Commissioner of Agriculture or his authorized representative, and for immediate slaughter only. The owner of the animals shall be responsible for the cost of maintaining the quarantine, the necessary treatment, and the feed and care of the animals while under quarantine and said cost shall constitute a lien against all of said animals. All trucks, trailers, and other conveyances used in transporting livestock shall be cleaned and disinfected in accordance with the regulations issued by authority of this article. (1941, c. 263, s. 7.)

§ 106-413. Sale, etc., of certain diseased animals prohibited; application of article; sales by farmers.—No person or persons shall sell or offer for sale, trade or otherwise dispose of any animal or animals that are affected with a contagious or infectious disease or that the owner or person in charge has reason to believe are so affected, except upon permission of the Commissioner of Agriculture or his authorized representatives and for immediate slaughter only. The provisions of this article requiring inspection, testing, vaccination, paint marking, identification with an ear tag and health certificate issued by a qualified veterinarian shall apply to all animals sold or offered for sale on any public highway, right of way, street, or within one-half mile of any public livestock market, or other public place: Provided, that this provision shall not apply to animals raised and owned by a bona fide farmer who is a resident of the State of North Carolina and sold or offered for sale by him. (1941, c. 263, s. 8; 1943, c. 724, s. 5.)

§ 106-414. Transportation, sale, etc., of diseased livestock; burden of proving health.—No cattle, swine, or other livestock affected with a contagious or infectious disease shall be transported or otherwise moved on any public highway or street in this State except upon written permission of the Commissioner of Agriculture or his authorized representative for immediate slaughter only to a designated slaughter point. The burden of proof to establish the health of any animal transported on the public highways of this State, sold, traded, or otherwise disposed of in any public place shall be upon the vendor. Any person who shall sell, trade, or otherwise dispose of any animal affected with a contagious or infectious disease knowingly, or who has reasons to believe that the animal is so affected, shall be liable for all damages resulting from such sale or trade. (1941, c. 263, s. 9.)

§ 106-415. Fees for permits; term of permits; cost of tests, serums, etc.—The Commissioner of Agriculture is hereby authorized to collect a fee of one hundred dollars ($100.00) for each permit issued to a public livestock market under the provisions of this article. The fees provided for in this article shall be used exclusively for the enforcement of this article. All permits issued under the provisions of this article shall be effective until the following July first unless canceled for cause. The cost of all tests, serums, vaccine, and other medical supplies necessary for the enforcement of this article and the protection of livestock against contagious and infectious diseases shall be paid for by the owner of said livestock and said cost shall constitute a lien against all of said animals; provided that the Commissioner of Agriculture by and with the consent of the State Board of Agriculture is hereby authorized to determine reasonable charges and costs for such tests, serum, vaccines, and other medical supplies. (1941, c. 263, s. 10; 1949, c. 997, s. 6; 1957, c. 1269.)

§ **106-416. Rules and regulations.**—Commissioner of Agriculture, by and with the consent of the State Board of Agriculture, shall have full power to promulgate and enforce such rules and regulations that may hereafter be necessary to carry out the provisions of this article. (1941, c. 263, s. 11.)

§ **106-417. Violation made misdemeanor; responsibility for health, etc., of animals.**—Any person, firm, or corporation who shall knowingly violate any provisions set forth in this article or any rule or regulation duly established by the State Board of Agriculture, or any officer or inspector who shall willfully fail to comply with any provisions of this article shall be guilty of a misdemeanor, and shall be fined or imprisoned, or both, in the discretion of the court. A market operating under this article shall not be responsible for the health or death of an animal sold through such market if the provisions of this article have been complied with. (1941, c. 263, s. 12; 1943, c. 724, s. 6.)

§ **106-418. Exemption from health provisions.**—The health provisions of this article shall not apply to no-sale cattle offered for sale by a bona fide farmer owning said stock for at least sixty days at any public livestock auction market in North Carolina. (1941, c. 263, s. 12½.)

ARTICLE 36.

Plant Pests.

§ **106-419. Plant pest defined.**—A plant pest is hereby defined to mean any insect, mite, nematode, other invertebrate animal, disease, noxious weed, plant or animal parasite in any stage of development which is injurious to plants and plant products. (1957, c. 985.)

§ **106-420. Authority of Board of Agriculture to adopt regulations.**—The Board of Agriculture is hereby authorized to adopt reasonable regulations to implement and carry out the purposes of this article as to eradicate, repress and prevent the spread of plant pests (i) within the State, (ii) from within the State to points outside the State, and (iii) from outside the State to points within the State. The Board of Agriculture shall adopt regulations for eradicating such plant pests as it may deem capable of being economically eradicated, for repressing such as cannot be economically eradicated, and for preventing their spread within the State. Regulations may provide for quarantine of areas. It may also adopt reasonable regulations for preventing the introduction of dangerous plant pests from without the State, and for governing common carriers in transporting plants, articles or things liable to harbor such pests into, from and within the State. The Board is authorized, in order to control plant pests, to adopt regulations governing the inspection, certification and movement of nursery stock, (i) into the State from outside the State, (ii) within the State, and (iii) from within the State to points outside the State. The Board is further authorized to prescribe and collect a schedule of fees to be collected for its nursery inspection, nursery dealer certification, and narcissus bulb inspection activities. (1957, c. 985.)

Cross Reference. — See § 106-22, subdivision (5).

§ **106-421. Permitting uncontrolled existence of plant pests; nuisance; method of abatement.**—No person shall knowingly and willfully keep upon his premises any plant or plant product infested or infected by any dangerous plant pest, or permit dangerous plants or plant parasites to mature seed or otherwise multiply upon his land, except under such regulations as the Board of Agriculture may prescribe. All such infested or infected plants and premises are hereby declared public nuisances. The owner of such plants or premises shall, when notified to do so by the Commissioner of Agriculture, take such measures as may be prescribed to eradicate such pests. The notice shall be in writing and shall be mailed to the usual or last known address, or left at the ordinary place of business, of the owner or his agent. If such person fails to comply with such notice within such reasonable time as the notice prescribes, the Commissioner of Agriculture, through his duly authorized agents, shall proceed to take such measures as shall be necessary to eradicate such pests, and shall compute the actual costs of labor and materials used in eradicating such pests, and the owner of the premises in question shall pay to the Commissioner of Agriculture such assessed costs. No damages shall be awarded the owner of such premises for entering thereon and destroying or otherwise treating any infected or infested plants or soil when done by the order of the Commissioner of Agriculture. (1957, c. 985.)

§ **106-422. Agents of Board; inspection.**—The Commissioner of Agriculture shall be the agent of the Board in enforcing these regulations, and shall have authority to designate such employees of the Department as may seem expedient to carry out the duties and exercise the powers provided by this article. Persons collaborating with the Division of Entomology may also be designated by the Commissioner of Agriculture as agents for the purpose of this article. The Commissioner of Agriculture, and any duly authorized agent of the Commissioner, shall have the authority to inspect vehicles or other means of transportation and its cargo suspected of carrying plant pests and to enter upon and inspect any premises between the hours of sunrise and sunset during every working day of the year to determine the presence or absence of injurious plant pests. (1957, c. 985.)

§ **106-423. Nursery inspection; nursery dealer's certificate; narcissus inspection.**—The Board of Agriculture shall have the authority to define nursery stock. The Commissioner of Agriculture shall have the right to cause all plant nurseries, and narcissus bulb fields where narcissus bulbs are commercially raised, within the State to be inspected at least once each year for serious plant pests. Every person, firm or corporation buying and reselling nursery stock shall register and secure a dealer's certificate for each location from which plants are sold. (1957, c. 985.)

§ **106-423.1. Criminal penalties; violation of laws or regulations.**—If anyone shall attempt to prevent inspection of his premises as provided in the preceding sections, or shall otherwise interfere with the Commissioner of Agriculture, or any of his agents, while engaged in the performance of his duties under this article, or shall violate any provisions of this article or any regulations of the Board of Agriculture adopted pursuant to this article, he shall be guilty of a misdemeanor and shall be fined not less than five nor more than fifty dollars, or imprisoned for not less than ten nor more than thirty days, for each offense. Each day's violation shall constitute a separate offense. (1957, c. 985.)

ARTICLE 37.

Cotton Grading.

§ **106-424. Federal standards recognized.**—The standards or grades of cotton established or which may be hereafter established by the Secretary of Agriculture by virtue of acts of Congress shall be recognized as the standards in transactions by and between citizens of this State in transactions relating to cotton. (1915, c. 23, s. 1; C. S., s. 4901.)

§ **106-425. Duplicates of federal samples may be used.**—The Commissioner of Agriculture shall obtain from the Secretary of Agriculture a duplicate of each of these samples as represent cotton produced in this State for the use of the citizens of the State who may desire to use them in settlement of any disputed transaction. (1915, c. 23, s. 2; C. S., s. 4902.)

§ **106-426. Expert graders to be employed; cooperation with United States Department of Agriculture.**—The North Carolina Department of Agriculture shall have authority to employ expert cotton graders to grade cotton in this State under such rules and regulations as they may adopt. The above institutions may seek the aid of the United States Department of Agriculture in the prosecution of this work, and shall have authority to enter into such contracts or arrangements as shall be mutually agreeable in furtherance of the object and purpose of this article. (1915, c. 175, s. 1; C. S., s. 4903.)

§ **106-427. County commissioners to cooperate.**—Any board of commissioners of any county in North Carolina is authorized and empowered to cooperate with either, or both, of the above-named institutions in aid of the purposes of this article; and shall have authority to appropriate such sums of money as the said board shall deem wise and expedient. (1915, c. 175, s. 2; C. S., s. 4904.)

§ **106-428. Grading done at owner's request; grades as evidence.**—The expert graders employed by either of the above-named institutions, or by the United States government, shall have full right, power, and authority to grade any cotton in North Carolina upon the request of the owner of said cotton; and said graders shall grade and classify, agreeable to and in accordance with the standards or grades of cotton which are now or may hereafter be established by the Secretary of Agriculture by virtue of any act of Congress. The grade, or classification, pronounced by said expert graders of all cotton graded by them shall be prima facie proof of the true grade or classification of said cotton, and shall be the basis of all cotton sales in this State. (1915, c. 175, s. 3; C. S., s. 4905.)

§ **106-429. Grader's certificate admissible as evidence.**—In the event of any dispute or trial pending in any of the courts of this State, the certificate of any expert grader, employed as above provided, and acknowledged or proven before any clerk of the superior court of any county in the State, shall be admissible in evidence as to the grade or classification of cotton graded or classified by said expert. (1915, c. 175, s. 4; C. S., s. 4906.)

ARTICLE 38.

Marketing Cotton and Other Agricultural Commodities.

§ **106-429.1. Short title.**—The provisions of this article may be known and designated as the "North Carolina Agricultural Warehouse Act." (1965, c. 1029, s. 2.)

Editor's Note.—Section 1 of the act inserting this section sets out its purposes.

§ **106-430. Purpose of law.**—In order to protect the financial interests of North Carolina by stimulating the development of an adequate warehouse system for cotton and other agricultural commodities, in order to enable growers of cotton and other agricultural commodities more successfully to withstand and remedy periods of depressed prices, in order to provide a modern system whereby cotton and other agricultural commodities may be more profitably and more scientifically marketed, and in order to give these products the standing to which they are justly entitled as collateral in the commercial world, a warehouse system for cotton and other agricultural products in the State of North Carolina is hereby established as hereinafter provided. (1919, c. 168, s. 1; 1921, c. 137, s. 1; C. S., s. 4925(a); 1941, c. 337, s. 1.)

Editor's Note.—The 1941 act, amending several sections of this article and inserting § 106-439, provides that its provisions shall not apply to the storage of tobacco in any form.

Prior Law.—For a full discussion of the purpose and application of the former statutes, see Bickett v. State Tax Comm'n, 177 N.C. 433, 99 S.E. 415 (1919).

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

§ **106-431. Definition of "other agricultural commodities".**—The term "other agricultural commodities" as used in this article shall mean such agricultural commodities other than cotton as shall be designated by the Board of Agriculture, through rules and regulations adopted pursuant to this article, as suitable to be stored in the warehouses operating under this article. (1941, c. 337, s. 1½.)

Cited in Lacy v. Hartford Acc. & Indem. Co., 193 N.C. 179, 136 S.E. 359 (1927); Champion Shoe Mach. Co. v. Sellers, 197 N.C. 30, 147 S.E. 674 (1929).

§ **106-432. Board of Agriculture administers law, makes rules, appoints superintendent.**—The provisions of this article shall be administered by the State Board of Agriculture, through a suitable person to be selected by said Board, and known as the State warehouse superintendent. In administering the provisions of this article the Board of Agriculture is empowered to make and enforce such rules and regulations as may be necessary to make effective the purposes and provisions of this article, and to fix and prescribe reasonable charges for storing cotton and other agricultural commodities in the local warehouses and publish the same from time to time as it may deem necessary. (1919, c. 168, s. 2; 1921, c. 137, s. 2; C. S., s. 4925 (b); 1941, c. 337, s. 2.)

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

§ **106-432.1. When employer-employee relationship deemed to exist; when person deemed employee, agent or officer of State, Board, superintendent or system.**—For the purposes of this article, the relationship and status of employer-employee shall be deemed to exist only: When created and subsisting under an express contract of employment, written or oral; for a term, or terminable at the will of the employer; wherein the right to make and enter into the contract of hire or employment, and the right to fire, or to discharge, either at will or for cause reserved in the contract of employment, shall remain with the employer, with respect to the person employed; and the right to prescribe, direct, supervise and closely control the duties of the employee and the discharge of his duties of employment, remains substantially with the employer; and where the compensation of the employee is determined, pursuant to contract or otherwise, by the employer and paid wholly or in part from funds of the employer or funds controlled, at least in part, by and available to him.

No person functioning under or pursuant to this article shall be deemed an employee or agent or officer of the State of North Carolina, the State Board of Agriculture, the State warehouse superintendent, or of the State warehouse system, as such: Unless in this article and in pertinent regulations and in an express contract, specifically made and designated an employee or agent of the State or State agency (whether as an assistant, manager, inspector, grader, or classer) and unless actually engaged in and within the scope of his duties as an employee, official, or agent of the State of North Carolina, the Board, the superintendent or the system; and unless such person is compensated in whole or in part from funds of or within the control of the State of North Carolina; and unless subject to the right of the State or any of the State agencies, officers and instrumentalities mentioned, to engage, employ or hire him and to terminate his employment or agency, or to contract with him with respect to the terms and conditions and termination of his agency or employment; and unless subject to the direct control of the State of North Carolina or any of its officers, agencies or entities, with respect to fixing, supervising and controlling his duties of employment or agency. (1965, c. 1029, s. 3.)

Editor's Note.—Section 1 of the act inserting this section sets out its purposes.

§ 106-433. Employment of officers and assistants; licensing private facilities as components of warehouse system; licensing employees of private facilities.—(a) The Board of Agriculture shall have authority to employ a warehouse superintendent and necessary assistants, local managers, examiners, inspectors, expert cotton classers, and such other employees as may be necessary in carrying out the provisions of this article, and fix and regulate their duties.

(b) The Board of Agriculture acting through the State warehouse superintendent is authorized, from time to time, to license privately owned or operated warehouse facilities as component units of the State warehouse system (whether under a lease of such facilities from the State or not) to operate under and pursuant to the provisions of this article, and to require or permit such licensed warehouse facility to operate and function as a component of the State warehouse system and to subordinate and maintain the licensed warehouse operation (subject to the supervision and regulation of the State warehouse superintendent) under the United States Warehouse Act, and regulations thereunder, as referred to in G.S. 106-450. Licensing and operation requirements of such licensed component warehouse facilities of the State warehouse system may be determined and regulated generally by rules and regulations prescribed by the Board, and the State warehouse superintendent may, in addition, prescribe special rules, regulations, and conditions applicable to the particular licensed warehouse facility. Any license issued by the Board from time to time may be cancelled, revoked, or suspended in the unfettered discretion of the Board or the State warehouse superintendent, with or without cause. Such cancellation, revocation, termination or suspension shall also have the immediate effect of terminating, revoking, cancelling or suspending the operation of the warehouse facility as a component unit in the State warehouse system under the United States Warehouse Act and federal regulations issued thereunder. The Board of Agriculture or the State warehouse superintendent may, in their discretion, require and issue, and from time to time revoke, cancel, terminate or suspend, a license for individual warehouse superintendents, managers, examiners, inspectors, classers, and any other employees of privately owned and licensed warehouse facilities, and may generally fix and regulate their duties. The Board of Agriculture or the State warehouse superintendent may, in their unfettered discretion, take any action, with respect to such employees, deemed necessary to insure, or safeguard, or protect the State warehouse system, and to better carry out and enforce the provisions of this article, and those provisions of the United States Warehouse Act and regulations thereunder which may be incumbent upon the Board or the superintendent. Such individuals, whether licensed or not, shall not be employees or agents of the "State" (which is defined for the purposes of this section to mean and include the State of North Carolina, the State Board of Agriculture, the State warehouse superintendent, or the State warehouse system). (1919, c. 168, s. 3; 1921, c. 137, s. 3; C. S., s. 4925(c); 1965, c. 1029, s. 4.)

Editor's Note. — The 1965 amendment designated the former provisions of the section as subsection (a) and added subsection (b). Section 1 of the amendatory act sets out its purposes.

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

§ 106-434. Bonds of superintendent, State employees and private warehouse facilities and their employees.—The person named as State warehouse superintendent shall give bond to the State of North Carolina in the sum of fifty thousand dollars ($50,000) to guarantee the faithful performance of his duties, the expense of said bond to be paid by the State, to be approved as other bonds for State officers. The State warehouse superintendent shall, to safeguard the interests of the State, require bonds from other State employees or agents authorized in § 106-433 (a), and may, both for the purpose of safeguarding the interests of the State and of depositors of agricultural commodities with valid, subsisting, and duly authenticated official negotiable warehouse receipts issued under and pursuant to § 106-441, or the pledgee or transferee of such official negotiable warehouse receipts under § 106-442, require bonds with corporate surety from privately owned and licensed warehouse facilities and from warehouse superintendents, managers and other employees of the licensed warehouse facilities authorized under G.S. 106-433 (b). All such bonds shall be in such ample penal sums and secured by corporate surety authorized to do business in the State of North Carolina, as the State warehouse superintendent may direct and find that ordinary business experience in such matters would require. (1919, c. 168, s. 4; 1921, c. 137, s. 4; C. S., s. 4925(d); 1965, c. 1029, s. 5.)

Editor's Note. — The 1965 amendment substituted the present last two sentences for the former last sentence. Section 1 of the amendatory act sets out its purposes.

Liability for Loss as Affected by Negligence.—The larceny or loss of cotton from a warehouse through no fault of the warehouseman does not relieve his bond of liability, for a warehouseman is an insurer. Lacy v. Hartford Acc. & Indem. Co., 193 N.C. 179, 136 S.E. 359 (1927).

Fraudulent Negotiation of Warehouse Receipt.—Where the superintendent of a warehouse delivers cotton, takes the endorsed receipts and, instead of cancelling them, negotiates a loan for his own benefit, pledging the receipts as collateral, this is a clear breach of his duty for which an action on his bond will lie. Lacy v. Globe Indem. Co., 189 N.C. 24, 126 S.E. 316 (1925).

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

§ 106-435. Fund for support of system; collection and investment.—In order to provide a sufficient indemnifying or guarantee fund to cover any loss not covered by the bonds hereinbefore mentioned, in order to provide the financial backing which is essential to make the warehouse receipt universally acceptable as collateral, and in order to provide that a State warehouse system intended to benefit all cotton growers in North Carolina shall be supported by the class it is designed to benefit, it is hereby declared: That on each bale of cotton ginned in North Carolina during the period from the ratification of this bill until June thirty, one thousand nine hundred and twenty-two, twenty-five (25) cents shall be collected through the ginner of the bale and paid into the State treasury, to be held there as a special guarantee or indemnifying fund to safeguard the State warehouse system against any loss not otherwise covered. The State Tax Commission shall provide and enforce the machinery for the collection of this tax, which shall be held in the State treasury to the credit of the State warehouse system. Not less than ten per centum of the entire amount collected from the per bale tax shall be invested in United States government or farm loan bonds or North Carolina bonds, and the remainder may be invested in amply secured first mortgage notes or bonds to aid and encourage the establishment of warehouses operating under this system, and to aid and encourage the establishment of farm markets designed to serve the marketing, packaging, and grading needs for the sale and distribution of unprocessed farm commodities when adequate markets are not otherwise provided. Such investments shall be made by the Board of Agriculture, with the approval of the Governor and Attorney General: Provided, such first mortgages shall be for not more than one half the actual value of the warehouse property covered by such mortgages, and run not more than ten years: Provided further, that the interest received from all investments shall be available for the administrative expense of carrying into effect the provisions of this law, including the employment of such persons and such means as the State Board of Agriculture in its discretion may deem necessary: Provided further, that the guarantee fund, raised under the provisions of §§ 4907 to 4925 of the Consolidated Statutes of 1919, shall become to all intents and purposes a part of guarantee fund to be raised under this law and subject to all the provisions hereof. (1919, c. 168, s. 5; 1921, c. 137, s. 5; Ex. Sess. 1921, c. 28; C. S., s. 4925(e); 1957, c. 1091.)

Constitutionality.—The tax contemplated under this section, being uniform upon those of the class designated, and being laid upon a trade, whether that of cotton ginning or farming, is within the authority conferred on the legislature to further "tax trades," etc., and is constitutional. Bickett v. State Tax Comm'n, 177 N.C. 433, 99 S.E. 415 (1919).

Proper Parties in Action to Enforce Section.—The Governor, the State Board of Agriculture, and the State warehouse superintendent are proper parties plaintiff in an action against the members of the State Tax Commission to require them to provide and enforce the machinery for the collection of the tax provided by this article. Bickett v. State Tax Comm'n, 177 N.C. 433, 99 S.E. 415 (1919).

Liability of Fund Is Secondary.—A judgment against defendants who had deposited cotton and received negotiable warehouse receipts without disclosing that the cotton was a portion of crops included in recorded liens held by plaintiff, and a judgment against the State Treasurer to be paid from the fund provided by this section, should provide that the liability of the defendants depositing the cotton is primary and the liability of guaranty fund is secondary. Ahoskie Prod. Credit Ass'n v. Whedbee, 251 N.C. 24, 110 S.E.2d 795 (1959).

Recovery on Bond. — Where a warehouse superintendent fraudulently negotiates spent warehouse receipts and the bona fide holder thereof recovers from the indemnifying fund provided by this section, the State may recover on the bond of the superintendent. The bond is the fund primarily liable. Lacy v. Globe Indem. Co., 189 N.C. 24, 126 S.E. 316 (1925). See Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

Loss Due to Failure to Issue Receipt Not Recoverable from State Treasurer.—A recovery may not be had against the State Treasurer out of the fund accumulated under this section, for a loss resulting to plaintiff by failure of a warehouse to issue official receipts for cotton to plaintiff as agreed, the receipts having been issued to the holder of a lien against the cotton and the warehouse having refused delivery of the cotton to plaintiff upon his demand, since the purpose of the statute is to make warehouse receipts acceptable as collateral, and plaintiff is not the holder of the receipts. Northcutt v. People's Bonded Warehouse Co., 206 N.C. 842, 175 S.E. 165 (1934).

Cited in Harris v. Fairley, 232 N.C. 551, 61 S.E.2d 616 (1950).

§ 106-436. Registration of gins; gin records and reports; payment of tax.—If the special levy authorized by § 106-446 is made, it shall be the duty of the Commissioner of Agriculture to require the registration of all gins operating within the State, and to furnish the certificates of registration, numbered serially, free upon application; and each person, firm, partnership, or corporation receiving the said certificate of registration shall post it conspicuously in the gin to which it applies. For failure to make application and secure such certificate of registration, and to post same as required in this section, before beginning operation, each person, firm, partnership, or corporation shall be subject to a penalty of five dollars ($5) for each and every day such gin shall be operated prior to securing and posting such certificate of registration. The penalty herein provided for shall be recovered by the State in a civil action to be brought by the State Commissioner of Agriculture in any court of competent jurisdiction, and it shall be the duty of the Attorney General to prosecute all such actions. Each person, firm, partnership, or corporation operating a gin shall keep a record, on forms furnished or approved by the Commissioner of

Agriculture, showing the names and addresses of the owners of the cotton ginned, the number of bales ginned, and the date of each ginning; and each such operator of a gin shall report the number of bales ginned, and pay the tax levied in § 106-435 to the State at least once every thirty days after beginning operation, and shall send a true copy of the report to the Commissioner of Agriculture. (1921, c. 137, s. 6; C. S., s. 4925(f).)

§ **106-437. Qualifications of warehouse manager.**—No otherwise qualified person shall be qualified as manager of a warehouse unless the members of the board of county commissioners and the president of some bank in the county in which the warehouse is operated shall certify to the State warehouse superintendent that the person desiring to be warehouse manager is in their opinion a man of good character, competent, and of good reputation, deserving the confidence of the people. (1919, c. 168, s. 6; 1921, c. 137, s. 7; C. S., s. 4925(g); 1965, c. 1029, s. 6.)

Editor's Note. — The 1965 amendment substituted "No otherwise qualified person shall be qualified as manager" for "No man shall be employed as manager" at the beginning of this section. Section 1 of the amendatory act sets out its purposes.

Obligations of Warehouse Manager. — For obligations assumed by the manager of a warehouse operating pursuant to the provisions of this article, see Ahoskie Prod. Credit Ass'n v. Whedbee, 251 N.C. 24, 110 S.E.2d 795 (1959).

§ **106-438. Warehouse superintendent to accept federal standards.**—The State warehouse superintendent shall accept as authority the standards and classifications of cotton established by the federal government. (1919, c. 168, s. 9; 1921, c. 137, s. 8; C. S., s. 4925(h).)

§ **106-439. Leasing and licensing of property by superintendent; manner of operating warehouse system.**—The State warehouse superintendent shall have the power to lease for State operation by State employees and for stated terms property for the warehousing by the State of cotton and other agricultural commodities. The State warehouse superintendent shall also have the power to lease from, and to license private or corporate warehouse property for the warehousing of such agricultural commodities under State license, general supervision and control, as a component unit of the State warehouse system. The terms and conditions of the State license shall prevail over the stated terms and conditions of the lease. In no event, however, regardless of the terms and conditions of the lease, shall any rental be paid by the State until the operating expenses of the leased warehouse facility shall have been paid from the income from the leased warehouse facility. The State shall not be responsible in any case for the payment of rental, except from the income of any leased warehouse facility in excess of the operating expenses of the facilities. The State warehouse superintendent shall fix the terms upon which private or corporate warehouses may be permitted to operate under State license and supervision, and obtain the benefits thereof, regardless of the terms and conditions of any lease agreement between the private or corporate warehouse and the State. It shall be his special duty to foster and encourage the erection of warehouses in the various cotton-growing and agricultural counties of the State for operation under the terms of this article, and to provide an adequate system of inspection, and of rules, forms, and reports to insure the security of the system, such matters to be approved by the State Board of Agriculture. The violation of such rules shall be a misdemeanor. Cotton and other agricultural products may be stored in such warehouses by any person owning them, and receive all of the benefits accruing from operation of such warehouses under direct State management, or as the case may be, under State license, general supervision and regulation, as component units of the State warehouse system and any person permitted to store cotton or other products in any such warehouse shall pay to the manager of the warehouse such sum or sums for rent or storage as may be agreed upon, subject to § 106-432, by the manager, and such person desiring storage therein. (1919, c. 168, s. 10; 1921, c. 137, s. 9; C. S., s. 4925(i); 1941, c. 337, s. 3; 1965, c. 1029, s. 7.)

Editor's Note.—The 1965 amendment rewrote the former first sentence, including the proviso, to appear as the present first six sentences; deleted "by any officer of the system" following "rules" in the present eighth sentence, and substituted "operation of such warehouses under direct State management, or as the case may be, under State license, general supervision and regulation, as component units of the State warehouse system" for "such State management" in the last sentence. Section 1 of the amendatory act sets out its purposes.

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

Cited in Harris v. Fairley, 232 N.C. 551, 61 S.E.2d 616 (1950).

§ 106-440. Power of superintendent to sue or to be sued; liability for tort.—The said superintendent shall also have the power to sue, or to be sued, in the courts of this State in his official capacity, but not as an individual, except in case of tort or neglect of duty, when the action shall be upon his bond. Suits may be brought in the county of Wake or in the county in which the cause of action arose. (1919, c. 168, s. 11; 1921, c. 137, s. 10; C. S., s. 4925(j).)

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

§ 106-441. Grading and weighing of products; negotiable receipts; authentication of receipts.—When agricultural commodities other than cotton have been stored in warehouses operated under this article and have been graded and standardized in conformity with the grades and standards heretofore or hereafter promulgated by the Board of Agriculture, acting under the provisions of §§ 106-185 to 106-196, negotiable warehouse receipts of form and design approved by the Board of Agriculture may be issued. As soon as possible after any lint cotton, properly baled, is received for storage, the local manager shall, if it has not been done previously, have it graded and stapled by a federal or State classifier and legally weighed. Official negotiable receipts of the form and design approved by the Board of Agriculture shall be issued for such cotton under the seal and in the name of the State of North Carolina, stating the location of the warehouse, the name of the manager, the mark on said bale, the weight, the grade, and the length of the staple, so as to be able to deliver on surrender of the receipt the identical cotton for which it was given. On request of the depositor, negotiable receipts may be issued under this section omitting the statement of grade or staple, such receipt to be stamped on its face, "Not graded or stamped on request of the depositor." The warehouse manager shall fill in receipts issued under this section and they shall be signed by him or in his name by his duly authorized agent, and by the State warehouse superintendent or in the name of the State warehouse superintendent by his duly authorized licensee, State employee, or State agent. If the local manager cannot issue a negotiable receipt complete for cotton or other agricultural commodities, he shall issue nonnegotiable memorandum receipts therefor, said memorandum receipts to be taken up and marked "Canceled" by the local manager upon the delivery of negotiable receipts for such commodities. If the official negotiable receipt is issued for cotton or other agricultural commodities of which the manager is the owner, either solely or jointly or in common with others, the fact of such ownership must appear on the face of the receipt. No responsibility is assumed by the State warehouse system for fluctuation in weight or grade or quality due to natural causes; but in other respects the receipts issued under this section for cotton and other agricultural commodities shall be supported and guaranteed by the indemnifying fund provided in § 106-435. (1919, c. 168, s. 12; 1921, c. 137, s. 11; C. S., s. 4925(k); 1925, c. 225; 1941, c. 337, s. 4; 1965, c. 1029, s. 8.)

Editor's Note.—The 1965 amendment rewrote the fifth sentence and inserted "or grade or quality" following "weight" near the beginning of the last sentence. Section

1 of the amendatory act sets out its purposes.

Warehouseman as Insurer. — Where under a contract of bailment the bailee receives certain bales of cotton and stores them in his warehouse, under agreement to return the identical bales upon return of the warehouse receipts in the manner provided in the contract, the liability of the bailee is that of insurer, and it is liable in damages when it is prevented by theft from performing its contract, though without negligence on its part. Lacy v. Hartford Acc. & Indem. Co., 193 N.C. 179, 136 S.E. 359 (1927), decided under former law.

Stated in Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

§ 106-442. Transfer of receipt; issuance and effect of receipt. — The official negotiable receipt issued under § 106-441 for cotton or other agricultural commodity so stored is to be transferable by written assignment and actual delivery, and the cotton or other agricultural commodity which it represents is to be deliverable only upon a physical presentation of the receipt, which is to be marked "Canceled," with date of cancellation, when the cotton or other agricultural commodity is taken from the warehouse. The said official negotiable receipt carries absolute title to the cotton or other agricultural commodity, and it is the duty of the local manager accepting same for storage to satisfy himself that the depositor has good title to the same. (1921, c. 137, s. 12; C. S., s. 4925(l); 1941, c. 337, s. 5; 1955, s. 523.)

"Satisfy Himself".—This section requires the local manager to satisfy himself, which implies that he must act as a prudent person and exercise reasonable care under existing conditions. Ahoskie Prod. Credit Ass'n v. Whedbee, 251 N.C. 24, 110 S.E.2d 795 (1959).

Sale by Wrongdoer to Innocent Purchaser.—Where wrongdoer obtained cotton by false pretense, stored it and obtained negotiable warehouse receipts without signing the certificates of ownership, and negotiated the receipts to an innocent purchaser for value without notice, by virtue of this section the purchaser obtained absolute title to the cotton. But the true owner is entitled to recover its value against the bond of the warehouse manager and the warehouse if the loss was occasioned by any default in the faithful performance of their obligations under this article, or the bond of the State warehouse superintendent if the loss was occasioned by his default in the faithful performance of his duties, or, if the loss is not covered by such bonds, then under the indemnifying or guarantee fund created by § 106-435. Ellison v. Hunsinger, 237 N.C. 619, 75 S.E.2d 884 (1953).

When Negotiation Not Impaired by Breach of Duty.—Official warehouse receipts are negotiable by written assignment and delivery, and negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, if the person to whom the receipt was negotiated took same for value, in good faith, and without notice of the breach of duty. Harris v. Fairley, 232 N.C. 551, 61 S.E.2d 616 (1950).

Facts Held Sufficient to Show Exercise of Due Diligence.—The manager of a warehouse, having had prior dealings with the depositor of cotton, issued negotiable receipts therefor in reliance on his belief in the integrity of such depositor and the depositor's representations and written warranties that there were no liens or valid claims outstanding against the cotton; but the manager failed to examine the records in the office of the register of deeds, which would have shown registered liens against the commodity. It was held that whether the manager exercised the care of a reasonably prudent person in issuing the negotiable receipts is susceptible to different conclusions by reasonable people, and the facts were sufficient to support the inference of fact that the manager exercised due diligence. Ahoskie Prod. Credit Ass'n v. Whedbee, 251 N.C. 24, 110 S.E.2d 795 (1959).

§ 106-443. Issuance of false receipt a felony; punishment. — The manager of any warehouse, or any agent, employee, or servant, who issues or aids in issuing a receipt for cotton or other agricultural commodity without knowing that such cotton or other agricultural commodity has actually been placed in the warehouse under the control of the manager thereof shall be guilty of a felony, and upon conviction be punished for each offense by imprisonment in the State penitentiary for a period of not less than one or more than five years, or by a fine not exceeding ten times the market value of the cotton or other agricultural commodity thus represented as having been stored. (1919, c. 168, s. 13; 1921, c. 137, s. 13; C. S., s. 4925(m); 1941, c. 337, s. 6.)

§ **106-444. Delivery of cotton without receipt or failure to cancel receipt.**—Any manager, employee, agent, or servant who shall deliver cotton or other agricultural commodity from a warehouse under this article without the production of the receipt therefor, or who fails to mark such receipt "Canceled" on the delivery of the cotton or other agricultural commodity, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), or imprisoned not more than five years, or both fine and imprisonment, in the discretion of the court. (1919, c. 168, s. 14; 1921, c. 137, s. 14; C. S., s. 4925(n); 1941, c. 337, s. 7.)

§ **106-445. Rules for issuance of duplicate receipts.**—A duplicate receipt is authorized to be issued for a lost or destroyed receipt, due record of the original receipt being found upon the books of the warehouse, only upon affidavit of the owner of the original that the original receipt has been lost or destroyed, and upon the owner's giving the State warehouse superintendent bond with approved security in an amount equal to the double value of the cotton or other agricultural commodity represented by the original receipt to indemnify the State and the component warehouse facility and the State warehouse system from loss or damage and the cost of any litigation. In determining the amount of the bond required under this section, the value of cotton shall be estimated at the highest market price of middling cotton during the preceding two years. The value of other agricultural commodities shall be estimated for this purpose in accordance with regulations to be prescribed by the Board of Agriculture. (1919, c. 168, s. 15; 1921, c. 137, s. 15; C. S., s. 4925(o); 1941, c. 337, s. 8; 1965, c. 1029, s. 9.)

Editor's Note. — The 1965 amendment substituted "A duplicate receipt is authorized to be issued" for "The State warehouse superintendent, or his duly authorized agent, and the manager of the local warehouse are authorized to issue a duplicate receipt" at the beginning of the first sentence, and substituted "the State and the component warehouse facility and the State warehouse system" for "the State warehouse superintendent and the local manager" near the end of that sentence. Section 1 of the amendatory act sets out its purposes.

§ **106-446. State not liable on warehouse debts; tax on cotton continued if losses sustained.**—No debt or other liability shall be created against the State by reason of the lease or operation of the warehouse system created by this article or the storage of cotton or other agricultural commodities therein, it being the purpose of this article to establish a self-sustaining system to operate as nearly as practicable at cost, without profit or loss to the State, except that expenses of supervision may be paid by the Board of Agriculture. While it is believed that the provisions and safeguards mentioned in this article, including the bonds required and supplemental indemnifying or guarantee fund mentioned in § 106-435, will insure the security of the system beyond any reasonable possibility of loss, nevertheless, in order to establish the principle that this system should be supported by those for whose especial financial benefit it is established, it is hereby provided that in the eventuality that the system should suffer at any time any loss not fully covered by the aforementioned bonds and indemnifying fund, such losses shall be made good by having the State Board of Assessment repeat for another twelve months selected by it the special levy on ginned cotton, as prescribed in § 106-435, for the two years ending June thirtieth of the year one thousand nine hundred and twenty-three. (1919, c. 168, s. 16; 1921, c. 137, s. 16; C. S., s. 4925(p); 1941, c. 337, s. 9; 1965, c. 1029, s. 10.)

Editor's Note.—The 1965 amendment deleted "of all officers" following "required" near the beginning of the second sentence. Section 1 of the amendatory act sets out its purposes.

§ **106-447. Insurance of cotton; premiums; lien for insurance and storage charges.**—The superintendent shall insure, or shall require the local manager to insure and keep insured for its full value, upon the best terms obtainable, by individual or blanket policy, all cotton and other agricultural commodities on storage against loss by fire and lightning. In case of loss, the superintendent shall collect the insurance due and pay the same, ratably, to those lawfully entitled to it, insurance policies to be in the name of the State and the premium collected from the owners of the cotton and other agricultural commodities, the State to have a lien on cotton and other agricultural commodities for insurance and storage charges as in the case of other public warehouses in the State. (1919, c. 168, s. 17; 1921, c. 137, s. 17; C. S., s. 4925(q); 1941, c. 337, s. 10; 1943, c. 474.)

§ **106-448. Superintendent to negotiate loans on receipts and sell cotton for owners.**—The State warehouse superintendent, in addition to the duties hereinbefore vested in him, is also permitted and empowered, upon the request of the owner or owners of the warehouse receipts and cotton or other agricultural commodities stored in such warehouses to aid, assist, and cooperate, or as the duly authorized agent of such owner or owners (which authorization shall be in writing), to secure and negotiate loans upon the warehouse receipts. And upon like written request or authorization of said owner or owners, and his or their duly authorized agent, he may sell and dispose of such warehoused cotton or other agricultural commodities for such owner or owners, either in the home or foreign markets, as may be agreed upon between such owner or owners and the said superintendent, in writing. And for said loan or sales the said superintendent shall charge reasonable and just commissions, without discrimination, all of which shall be accounted for and held as part of the fund for the maintenance and operation of the State warehouse system: Provided, however, that the State incurs no liability whatever for any act or representation of the superintendent in exercising any of the permissions or powers vested in him in this section: Provided, further, that the bond of the superintendent will be liable for any unfaithful or negligent act of his by reason of which the owner or owners of such warehoused cotton or other agricultural commodities suffers damage or loss. (1919, c. 168, s. 18; 1921, c. 137, s. 18; C. S., s. 4925(r); 1941, c. 337, s. 11.)

§ **106-449. Construction of 1941 amendment.** — The provisions of chapter 337 of the Public Laws of 1941, amending this article, shall not apply to the storage of tobacco in any form. (1941, c. 337, s. 11½.)

§ **106-450. Compliance with United States warehouse law.**—(a) The State warehouse superintendent may,

(1) Upon approval of the Board of Agriculture, operate or cause to be operated by State employees or State agents under his immediate and direct supervision and control, any or all State owned or State leased warehouses, or

(2) May cause to be operated privately owned and operated, but State licensed and generally regulated and supervised warehouses, also leased by the State warehouse superintendent, and forming component units of the State warehouse system,

(3) All under and pursuant to the provisions of this article, subject to the United States Warehouse Act and lawful regulations issued thereunder.

(b) The State warehouse superintendent is authorized, and the owners, operators, officers, and employees of affiliated State licensed component units in the State warehouse system are directed, to comply with the said United States Warehouse Act and such lawful regulations as may be issued thereunder, by the federal authorities, and such additional State rules and regulations which may be imposed, under and pursuant to this article, upon all parties concerned in the operation of the State warehouse system. (1921, c. 137, s. 19; C. S., s. 4925(s); 1965, c. 1029, s. 11.)

Editor's Note. — The 1965 amendment rewrote this section. Section 1 of the amendatory act sets out its purposes.

§ 106-450.1. Bond of State warehouse system under United States Warehouse Act. — Any bond required by the provisions of the United States Warehouse Act on behalf of the State warehouse system shall be procured in the name of, and shall show as the principal obligor thereon, the State of North Carolina and the obligations of such bond shall rest upon the State of North Carolina, acting through the State Board of Agriculture or the State warehouse superintendent on behalf of the State warehouse system. Any right of indemnity over as against the principal obligor for any loss under the bond by any surety, shall principally and primarily be directed against and encumber the State Warehouse Indemnifying or Guaranty Fund provided for under the terms and provisions of this article, including, but not restricted to, G.S. 106-435. Any cause of action arising out of or incidental to any bond furnished under and pursuant to the United States Warehouse Act shall be and constitute a claim and suit against the State of North Carolina, whether the State of North Carolina is designated as party defendant in any such action or not, and whether the action is brought against the State of North Carolina, the State Board of Agriculture, the State warehouse superintendent, the State warehouse system, the Treasurer of the State of North Carolina as custodian of the State Indemnity and Guaranty Fund, or any of them, or any individual holding an office or acting as agent of the State of North Carolina, the State Board of Agriculture, the State warehouse superintendent, the State warehouse system or other legal entity acting by and for the State or any of its agencies or instrumentalities in the execution of this article, There shall be no liability or cause of action against any individual acting as an officer, employee, agency or instrumentality of the State in the execution of this article under any bond furnished by the State under and pursuant to the United States Warehouse Act, except as in this article otherwise provided. (1965, c. 1038.)

§ 106-451. Numbering of cotton bales by public ginneries; public gin defined.—(a) Any person, firm or corporation operating any public cotton gin; that is, any cotton gin other than one ginning solely for the individual owner, owners, or operators thereof, shall hereafter be required to distinctly and clearly number, serially, each and every bale of cotton ginned, in one of the following ways:

(1) Attach a metal strip carrying the serial number to one of the ties of the bale and ahead of the tie lock, and so secure it that ordinary handling will not remove or disfigure the number;

(2) Impress the serial number upon one of the bands or ties around the bale.

Any person, firm or corporation failing or refusing to comply with this section shall be guilty of a misdemeanor for each and every offense, and upon conviction shall be fined not exceeding fifty dollars or imprisoned not more than thirty days.

(b) Any person, firm or corporation buying a bale of cotton on which this number has: (i) Been removed; (ii) defaced by cutting; (iii) or otherwise altered, unless a new metal strip is attached and impression made by the original gin ginning said bale or bales of cotton, shall be guilty of a misdemeanor for each and every offense and upon conviction shall be fined not exceeding fifty dollars ($50.00) or imprisoned not more than thirty (30) days.

(c) Every public ginnery, as defined in subsection (a) of this section, shall keep a book in which shall be registered all cotton received at the gin to be ginned in the name of the owner of the cotton and the name of the person from whom the cotton is received for ginning. Any person giving false information for entry in this book shall be guilty of a misdemeanor. There shall be furnished by the ginner for each bale of cotton ginned, to the owner thereof, a gin ticket bearing the name of the gin, the serial number of the bale prescribed by subsection (a) of this section, the weight of the bale and the name of the owner of the cotton. Such gin ticket shall be presented, for comparison with the serial number prescribed in subsection (a) of this section, at the time such bale is sold or offered for sale, as prima facie evidence of ownership thereof. (1923, c. 167; 1949, c. 824.)

§ **106-451.1. Purchasers of cotton to keep records of purchases.**—Every cotton broker or other person buying cotton from the producer after it is ginned shall keep a record of such purchase for a period of one year from date of purchase. This record shall contain the name and address of the seller of the cotton, the date on which purchased, the weight or amount and the serial number of the bales provided for by § 106-451. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined or imprisoned in the discretion of the court: Provided, any person, firm or corporation who purchases cotton which has been ginned outside this State shall be required to keep only so much of the records hereinabove specified as purchasers are required to keep by the law of the state where said cotton was ginned. (1945, c. 61; 1947, c. 977.)

Article 39.

Leaf Tobacco Warehouses.

§ **106-452. Maximum warehouse charges.**—The charges and expenses of handling and selling leaf tobacco upon the floor of tobacco warehouses shall not exceed the following schedule of prices, viz.: For auction fees, fifteen cents on all piles of one hundred pounds or less, and twenty-five cents on all piles over one hundred pounds; for weighing and handling, ten cents per pile for all piles less than one hundred pounds, for all piles over one hundred pounds at the rate of ten cents per hundred pounds; for commissions on the gross sales of leaf tobacco in said warehouses, not to exceed two and one half per centum: Provided that tobacco warehouses selling burley tobacco only may charge commissions on the gross sales of burley leaf tobacco not to exceed three and one half per centum (3½%). There may also be a basket fee of twenty-five cents (25¢) per basket on all burley leaf tobacco sold in such warehouses. (1895, c. 81; Rev., s. 3042; C. S., s. 5124; 1941, c. 291; 1955, c. 1029.)

Warehouse System Authorized as Aid in Marketing of Leaf Tobacco.—See Champion Shoe Mach. Co. v. Sellers, 197 N.C. 30, 147 S.E. 674 (1929).

Cited in Townsend v. Yeomans, 301 U.S. 441, 57 Sup. Ct. 842, 81 L. Ed. 1265 (1937); Davies Warehouse Co. v. Bowles, 321 U.S. 144, 64 Sup. Ct. 474, 88 L. Ed. 635 (1944).

§ **106-453. Oath of tobacco weigher; duty of weigher to furnish list of number and weight of baskets weighed.**—All leaf tobacco sold upon the floor of any tobacco warehouse shall first be weighed by some reliable person, who shall have first sworn and subscribed to the following oath, to wit: "I do solemnly swear (or affirm) that I will correctly and accurately weigh all tobacco offered for sale at the warehouse of ...., and correctly test and keep accurate the scales upon which the tobacco so offered for sale is weighed." Such oath shall be filed in the office of the clerk of the superior court of the county in which said warehouse is situated.

Immediately upon the weighing of any lot or lots of tobacco, the tobacco weigher shall furnish, upon request, to the person delivering such tobacco to the scale for weighing a true list showing the number of baskets of tobacco weighed and the individual weight of each such basket so presented. (1895, c. 81, s. 2; Rev., s. 3043; C. S., s. 5125; 1951, c. 1105, s. 1.)

Cross Reference.—As to provisions requiring accounts of sales and reports to Commissioner, see § 106-456 et seq.

§ 106-454. Warehouse proprietor to render bill of charges; penalty.—The proprietor of each and every warehouse shall render to each seller of tobacco at his warehouse a bill plainly stating the amount charged for weighing and handling, the amount charged for auction fees, and the commission charged on such sale, and it shall be unlawful for any other charges or fees to be made or accepted. For each and every violation of the provisions of this article a penalty of ten dollars may be recovered by anyone injured thereby. (1895, c. 81, ss. 3, 4; Rev., s. 3044; C. S., s. 5126.)

§ 106-455. Tobacco purchases to be paid for by cash or check to order. — The proprietor of each and every warehouse shall pay for all tobacco sold in said warehouse either in cash or by giving to the seller a check payable to his order in his full name or in his surname and initials and it shall be unlawful to use any other method. Every person, firm or corporation violating the provisions hereof shall, in addition to any and all civil liability which may arise by law, be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by fine not exceeding one hundred dollars or imprisonment not exceeding thirty days, or both, in the discretion of the court. (1931, c. 101, s. 1; 1939, c. 348.)

Editor's Note.—For discussion of this section prior to the 1939 amendment, see 9 N.C.L. Rev. 387.

Article 40.

Leaf Tobacco Sales.

§ 106-456. Accounts of warehouse sales required.—On and after the first day of August, one thousand nine hundred and seven, the proprietor of each and every leaf tobacco warehouse doing business in this State shall keep a correct account of the number of pounds of leaf tobacco sold upon the floor of his warehouse daily. (1907, c. 97, s. 1; C. S., s. 4926.)

Cross Reference.—As to effective period of lien upon leaf tobacco sold in auction warehouse, see § 44-69.

§ 106-457. Monthly reports to Commissioner; results classified.—On or before the tenth day of each succeeding month the said warehouse proprietors shall make a statement, under oath, of all the tobacco so sold upon the floor of his warehouse during the past month and shall transmit the said statement, at once, to the Commissioner of Agriculture at Raleigh, North Carolina. The report so made to the Commissioner of Agriculture shall be so arranged and classified as to show the number of pounds of tobacco sold for the producers of tobacco from first hand; the number of pounds sold for dealers; and the number of pounds resold by the proprietor of the warehouse for his own account or for the account of some other warehouse. (1907, c. 97, s. 2; C. S., s. 4927; Ex. Sess. 1921, c. 76.)

§ 106-458. Commissioner to keep record and publish in Bulletin. — The Commissioner of Agriculture shall cause said statements to be accurately copied into a book to be kept for this purpose, and shall keep separate and apart the statements returned to him from each leaf tobacco market in the State, so as to show the number of pounds of tobacco sold by each market for the sale of leaf tobacco; the number of pounds sold by producers, and the number of pounds resold upon each market. The Commissioner of Agriculture shall keep said books open to the inspection of the public, and shall, on or before the fifteenth day of each month, after the receipt of the reports above required to be made to him on or before the tenth day of each month, cause the said reports to be published in the Bulletin issued by the agricultural Department and in one or more journals published in the interest of the growth, sale, and manufacture of tobacco in the State, or having a large circulation therein. (1907, c. 97, s. 3; C. S., s. 4928; Ex. Sess. 1921, c. 76.)

§ 106-459. Penalty for failure to report sales. — Any warehouse failing to make the report as required by § 106-457 shall be subject to a penalty of twenty-five dollars and the costs in the case, to be recovered by any person suing for same in any court of a justice of the peace; and the magistrate in whose court the matter is adjudicated shall include in the cost of each case where the penalty is allowed one dollar, to be paid to the Department of Agriculture for expense of advertising. (1915, c. 31, s. 1; C. S., s. 4929.)

§ 106-460. Commissioner to publish names of warehouses failing to report sales; certificate as evidence.—The Commissioner shall, on the 14th day of each month, publish in some newspaper the names of the tobacco warehouses that have failed to comply with this article.

The certificate of the Commissioner under seal of the Department shall be admissible as evidence the same as if it were deposition taken in form as provided by law. (1915, c. 31, ss. 2, 3; C. S., s. 4930; Ex. Sess. 1921, c. 76.)

§ 106-461. Nested, shingled or overhung tobacco.—It shall be unlawful for any person, firm or corporation to sell or offer for sale, upon any leaf tobacco warehouse floor, any pile or piles of tobacco, which are nested, or shingled, or overhung, or either as hereinafter defined:

(1) Nesting tobacco: That is, so arranging tobacco in the pile offered for sale that it is impossible for the buyer thereof to pull leaves from the bottom of such pile for the purpose of inspection;
(2) Shingling tobacco: That is, so arranging a pile of tobacco that a better quality of tobacco appears upon the outside and tobacco of inferior quality appears on the inside of such pile; and
(3) Overhanging tobacco: That is, so arranging a pile of tobacco that there are alternate bundles of good and sorry tobacco. (1933, c. 467, s. 1.)

§ 106-462. Sale under name other than that of true owner prohibited.—It shall be unlawful for any person, firm or corporation to sell or offer for sale or cause to be sold, or offered for sale, any leaf tobacco upon the floors of any leaf tobacco warehouse, in the name of any person, firm or corporation, other than that of the true owner or owners thereof, which true owner's name shall be registered upon the warehouse sales book in which it is being offered for sale. (1933, c. 467, s. 2.)

§ 106-463. Allowance for weight of baskets and trucks.—It shall be unlawful for any person, firm or corporation in weighing tobacco for sale to permit or allow the basket and truck upon which such tobacco is placed for the purpose of obtaining such weight to vary more than two pounds from the standard or uniform weight of such basket and truck. (1933, c. 467, s. 3.)

§ 106-464. Violation made misdemeanor.—Any person, firm or corporation violating the provisions of §§ 106-461 to 106-463 shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1933, c. 467, s. 4.)

§ 106-465. Organization and membership of tobacco boards of trade; rules and regulations; price fixing prohibited.—Tobacco warehousemen and the purchasers of leaf tobacco, at auction, on warehouse floors, are hereby authorized to organize, either as nonstock corporations, or voluntary associations, tobacco boards of trade in the several towns and cities in North Carolina in which leaf tobacco is sold on warehouse floors, at auction.

Such tobacco boards of trade as may now exist, or which may hereafter be organized, are authorized to make reasonable rules and regulations for the economical and efficient handling of the sale of leaf tobacco at auction on the warehouse floors in the several towns and cities in North Carolina in which an auction market is situated.

The tobacco boards of trade in the several towns and cities in North Carolina are authorized to require as a condition to membership therein the applicants to pay a reasonable membership fee and the following schedule of maximum fees shall be deemed reasonable, to wit:

A membership fee of fifty dollars ($50.00) in those towns in which less than three million pounds of tobacco was sold at auction between the dates of August 20, 1931, and May 1, 1932; a fee of one hundred dollars ($100.00) in those towns in which during said period of time more than three million and less than ten million pounds of tobacco was sold; a fee of one hundred fifty dollars ($150.00) in those towns in which during said period of time more than ten million and less than twenty-five million pounds of tobacco was sold; a fee of three hundred dollars ($300.00) in those towns in which during said period of time more than twenty-five million pounds of tobacco was sold.

Membership, in good standing, in a local board of trade shall be deemed a reasonable requirement by such board of trade as a condition to participating in the business of operating a tobacco warehouse or the purchase of tobacco at auction therein.

Membership in the several boards of trade may be divided into two categories:

(1) Warehousemen;

(2) Purchasers of leaf tobacco other than warehousemen.

Purchasers of leaf tobacco may be: (i) Participating or (ii) nonparticipating. The holder of a membership as a purchaser of leaf tobacco shall have the option of becoming, upon written notice to the board of trade, either a participating or a nonparticipating member. Individuals, partnerships, and/or corporations who are members of tobacco boards of trade, established under this section or coming within the provisions of this section, as nonparticipating members shall not participate in or have any voice or vote in the management, conduct, activities, allotment of sales time, and/or hours, the fixing of dates for the opening or closing of tobacco auction markets, or in any other manner or respect. Individuals, partnerships, and/or corporations who are such nonparticipating members in any of the several tobacco boards of trade shall not be responsible or liable for any of the acts, omissions or commissions of the several tobacco boards of trade.

It shall be unlawful and punishable as of a misdemeanor for any bidder or purchaser of tobacco upon warehouse floors to refuse to take and pay for any basket or baskets so bid off from the seller when the seller has or has not accepted the price offered by the purchaser or bidder of other baskets. Any person suspended or expelled from a tobacco board of trade under the provisions of this section may appeal from such suspension to the superior court of the county in which said board of trade is located.

Nothing in this section shall authorize the organization of any association having for its purpose the control of prices or the making of rules and regulations in restraint of trade. (1933, c. 268; 1951, c. 383.)

Jurisdiction of Federal Trade Commission. — There is a substantial public interest in maintaining free and open competition among warehousemen on tobacco auction markets. The public interest often is specific and substantial, because the unfair method employed threatens the existence of present or potential competition. That is the basis for the jurisdiction of the Federal Trade Commission in a case involving regulations adopted pursuant to this section governing the allocation of selling time to tobacco warehouses. Asheville Tobacco Bd. of Trade, Inc. v. Federal Trade Comm'n, 263 F.2d 502 (4th Cir. 1959).

The decisions of the North Carolina courts since the enactment of this section make it clear that the sale of tobacco at auction is of great public importance to the State of North Carolina, but they also show that the operation of the business is in the hands of private parties. A tobacco board of trade is organized primarily for the benefit of those engaged in the business; its articles of association and bylaws constitute a contract amongst the members by which each member consents to reasonable regulations pertaining to the conduct of the business. Such a board is not an instrumentality of the State, and its activities are subject to the jurisdiction of the Federal Trade Commission. Asheville Tobacco Bd. of Trade, Inc. v. Federal Trade Comm'n, 263 F.2d 502 (4th Cir. 1959).

Rules and Regulations of Board.—The authority granted to a tobacco board of trade, under and by virtue of the provisions of this section, to make reasonable rules and regulations for the economical and efficient handling of the sale of leaf tobacco at auction on warehouse floors where an auction market is situated, is sufficiently broad to include the authority to make reasonable rules and regulations in respect to allotment of sales time. Cooperative Warehouse v. Lumberton Tobacco Bd. of Trade, 242 N.C. 123, 87 S.E.2d 25 (1955); Day v. Asheville Tobacco Bd. of Trade, 242 N.C. 136, 87 S.E.2d 18 (1955).

The articles of association for the purposes expressed in the charter and bylaws of a tobacco board of trade, organized and existing under and by virtue of this section, constitute a contract between it and its members, and as a consequence of membership in the corporation for mutual membership, each member is deemed to have consented to all reasonable rules and regulations pertaining to the business. Cooperation Warehouse v. Lumberton Tobacco Bd. of Trade, 242 N.C. 123, 87 S.E.2d 25 (1955); Day v. Asheville Tobacco Bd. of Trade, 242 N.C. 136, 87 S.E.2d 18 (1955).

Regulations adopted by a local tobacco board of trade involving allocation of selling time to warehouses were held in the instant case to unreasonably and unduly restrain trade in the purchase and sale of tobacco and to constitute unfair methods of competition and unfair acts or practices in commerce within the meaning of the Federal Trade Commission Act. Asheville Tobacco Bd. of Trade, Inc. v. Federal Trade Comm'n, 263 F.2d 502 (4th Cir. 1959).

A tobacco board of trade has no authority to legislate. It cannot create a duty where the law creates none. The legislature has the authority to regulate, within constitutional limits, the sale of leaf tobacco upon the auction markets of this State, and in doing so may prescribe standards of conduct to be observed by those who conduct auction warehouses as well as others participating in the sales. But this is a nondelegable power. Kinston Tobacco Bd. of Trade v. Liggett & Myers Tobacco Co., 235 N.C. 737, 71 S.E.2d 21 (1952).

Board Has No Right to Establish Sales and Require Buyers to Purchase Thereat.—This section is silent upon the question of the number of sales and prescribes no standard by which the number of sales may be determined. Therefore, in the absence of an agreement, either expressed or implied, a board organized under this section has no right to establish sales and require buyers to purchase thereat. Kinston Tobacco Bd. of Trade v. Liggett & Myers Tobacco Co., 235 N.C. 737, 71 S.E.2d 21 (1952).

Applied in Roberts v. Fuquay-Varina Tobacco Bd. of Trade, Inc., 220 F. Supp. 608 (E.D.N.C. 1963), aff'd, 332 F.2d 521 (4th Cir. 1964).

ARTICLE 41.

Dealers in Scrap Tobacco.

§ 106-466. Application for license; amount of tax; exceptions.—Every person, firm or corporation desiring to engage in the business of buying and/or selling scrap or untied tobacco in the State of North Carolina shall first procure from the Commissioner of Revenue of North Carolina a license so to do, and for that purpose shall file with the said Commissioner of Revenue an application setting forth the name of the county or counties in which such applicant proposes to engage in the said business and the place or places where his, their or its principal office (if any) shall be situated; and shall pay to the said Commissioner of Revenue of North Carolina, to be placed in the general fund for the use of the State, an annual license tax of five hundred dollars ($500.00) for each and every county in North Carolina in which the applicant proposes to engage in such business. Every such license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue. No license shall be issued for less than the full amount of tax prescribed. Any lot of parts of leaves of tobacco, or any lot in which parts of leaves of tobacco are commingled with whole leaves of tobacco, or any other leaf or leaves of tobacco, or parts of leaves of tobacco not permitted, under the rules and regulations of tobacco warehouses, to be offered for sale at auction on tobacco warehouse floors, shall be deemed to be "scrap or untied" tobacco within the meaning and purview of this article: Provided, that the tax herein levied shall not apply in cases where the producer delivers his scrap or untied tobacco to a tobacco warehouse or tobacco redrying plant. (1935, c. 360, s. 1; 1937, c. 414, s. 1; 1939, c. 389, s. 1; 1941, c. 246.)

Validity. — This article, imposing a license tax on dealers in scrap tobacco, is not vague or uncertain, and is uniform and equal in its application. Ficklen Tobacco Co. v. Maxwell, 214 N.C. 367, 199 S.E. 404 (1938), holding that the former tax of $1,000 was not excessive as a matter of law.

§ **106-467. Report to Commissioner of Agriculture each month.**—On or before the tenth day of each month every person, firm or corporation engaged in the business set forth in § 106-466 shall make a report to the Commissioner of Agriculture of North Carolina, setting forth the number of pounds of scrap or untied tobacco purchased and the price paid therefor during the preceding month in each of the counties in which the said person, firm or corporation is doing business and also the purposes for which such scrap tobacco is bought or sold. (1935, c. 360, s. 2; 1937, c. 414, s. 2.)

§ **106-468. Display of license; no fixed place of business; agents, etc.; licensing of processors, redriers, etc.**—(a) If any person, firm or corporation licensed to engage in the business aforesaid has a warehouse, office or fixed place of business, the license issued by the Commissioner of Revenue as herein provided shall be displayed in a conspicuous place in said warehouse, office or place of business. Such license so obtained shall not be transferable and shall authorize such person, firm or corporation to engage in the business described in this article only on the premises described in the license. Only one original license shall be issued to any person, firm or corporation, which will authorize such person, firm or corporation to engage in such business in the county for which such license is issued. If such person, firm or corporation shall have no warehouse, office, or fixed place of business in the county where such business is carried on, if the original license is to be issued to a firm, partnership or copartnership, there shall be designated on such license the name of the individual who is to exercise the privilege granted on behalf of such firm, partnership or copartnership. If such license is to be issued to a corporation, there shall be designated on such license the name of the individual who is to exercise the privilege granted on behalf of such corporation and the license so issued will authorize only the individual designated thereon to engage in such business for or on behalf of such person, firm, partnership, copartnership or corporation, and none other. If such person, firm or corporation carries on the business herein described through agents, representatives, solicitors, or peddlers other than those named on the original license issued, as herein provided, additional and like licenses, for which there shall be paid the sum of two hundred fifty dollars ($250.00) shall be obtained for such additional agents, representatives, solicitors, or peddlers for each county in which such business is carried on, in the manner hereinafter set out, and all original and additional licenses issued to persons, firms or corporations which have no warehouse, office or fixed place of business shall be carried on the person of such licensee and shall be exhibited when requested or demanded by any law enforcement officer of North Carolina, or any person from whom such tobacco is brought, or to whom the same may be sold.

Any person, firm or corporation applying for and obtaining a license under this article may employ traveling representatives, agents, peddlers, or solicitors for the purpose of buying and/or selling scrap tobacco, but such traveling representatives, agents or peddlers shall apply for and obtain from the Commissioner of Revenue a separate additional license on behalf of such person, firm or corporation whom or which he represents and shall pay for such license a tax of two hundred fifty dollars ($250.00) for each additional license so issued. Every such additional license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue. No license shall be issued for less than the full amount of tax prescribed. Such traveling representative, agent or peddler engaged in such business shall carry on his person the license so obtained, which shall be exhibited when requested or demanded by any law enforcement officer of North Carolina or any person from whom such tobacco is bought or to whom the same may be sold.

(b) Any such person, firm or corporation described in subsection (a) of this section, who is engaged in the business of buying and/or selling scrap tobacco within the meaning of this article, and who maintains and operates in connection therewith a plant or factory where such scrap tobacco is processed, manufactured, or redried, shall apply for and obtain from the Commissioner of Revenue a license to engage in such business and for that purpose shall file with the Commissioner of Revenue an application setting forth the name of the county or counties in which such applicant proposes to engage in such business, and the place or places where his, their, or its principal office is situated, and shall pay for such license a tax of five hundred dollars ($500.00) for each county in this State in which the applicant proposes to engage in such business. The license so issued shall authorize the person, firm or corporation to whom it is issued to engage in such business only on the premises designated in the license. Persons, firms or corporations taxed under this subsection shall not be required to pay the license tax provided for in subsection (a) of this section. Every such license issued hereunder shall run from the date thereof and shall expire on the thirty-first day of May of the next year following its issue and no license shall be issued for less than the full amount of the tax prescribed. (1935, c. 360, s. 3; 1937, c. 414, s. 3; 1939, c. 389, s. 2.)

§ **106-469. Violation made misdemeanor.**—Any person, firm or corporation violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be fined and/or imprisoned in the discretion of the court. (1937, c. 414, s. 4.)

§ **106-470. Exemptions.**—Nothing in this article shall have any effect upon or apply to any stocks of leaf and scrap tobacco grown prior to the year one thousand nine hundred thirty-seven, or to purchases or sales of scrap or untied tobacco which has been processed, redried or manufactured. (1937, c. 414, s. 4½; 1939, c. 389, s. 3.)

ARTICLE 42.

Production, Sale, Marketing and Distribution of Tobacco.

§§ **106-471 to 106-489**: Repealed by Session Laws 1955, c. 188, s. 1.

Editor's Note.—This article, known as the Tobacco Compact Act, depended upon similar action in other tobacco-producing states, which failed to materialize, and consequently was of no avail. 15 N.C.L. Rev. 323.

ARTICLE 43.

Combines and Power Threshers.

§§ **106-490 to 106-495**: Repealed by Session Laws 1955, c. 268, s. 2.

§ **106-495.1. Reports of crops harvested by means of combines or power threshers.**—It shall be the duty of the Commissioner of Agriculture to collect reports from every person, firm, or corporation who shall engage in the harvesting of crops by means of combines or power threshers; and it shall be the duty of every person, firm, or corporation engaging in the harvesting of crops by means of combines or power threshers to keep an accurate and complete record of the acreages harvested, and amounts threshed or combined for each farm, and to make reports on forms to be provided by the Commissioner of Agriculture showing acreages and amounts for the preceding season. For crops combined or threshed between January 1 and July 31 of each year the report shall be made not later than the first day of September of such year. For crops combined or threshed between August 1 and December 31 of each year the report shall be made not later than the first day of February of the next succeeding year. (1955, c. 268, s. 1.)

§ **106-495.2. Reports of sales of combines or power threshers.**—It shall be the duty of every person, firm, or corporation who shall sell any combine or power thresher in this State to report to the Commissioner of Agriculture the name and address of the purchaser thereof. Every sale completed on or after the first day of September and prior to the first day of May of the following year shall be reported on or before the first day of June of that year, and every sale completed on or after the first day of May and prior to the first day of September of each year shall be reported on or before the first day of October of said year. (1955, c. 268, s. 1.)

ARTICLE 44.

Unfair Practices by Handlers of Farm Products.

§ **106-496. Protection of producers of farm products against unfair trade practices.**—The Board of Agriculture is hereby authorized to make rules and regulations necessary to protect producers of farm products from loss through financial irresponsibility and unfair, harmful and unethical trade practices of persons, firms and corporations (hereinafter referred to as "handlers") and their agents, who incur financial liability for farm products. (1941, c. 359, s. 1.)

§ **106-497. Permits required of handlers of farm products not operating on cash basis.**—No person shall act as a handler of farm products on any basis except a cash basis, until he obtains a permit from the Commissioner of Agriculture. The Commissioner of Agriculture may require from each applicant such verified information as he sees fit in order to determine the applicant's financial responsibility and reputation, and the Board may make rules and regulations as to issuing permits. (1941, c. 359, s. 2.)

§ **106-498. Establishment of financial responsibility before permit issued; bond.**—No such permit shall be issued to any handler who is not operating on a strictly cash basis and who is incurring or may incur financial liability to any grower, until such person, firm, or corporation shall furnish to the Commissioner of Agriculture sufficient and satisfactory evidence of their ability to carry out their contract or furnish a satisfactory bond in an amount not to exceed ten thousand ($10,000) dollars. The Commissioner of Agriculture may require a new bond or additional bonds up to the ten thousand dollar ($10,000.00) limit when he finds it necessary for the protection of the producer. Such bonds shall be payable to the State in favor of every contract producer or consignor of farm products, and shall be continued upon compliance with all the provisions of this article, and the faithful fulfilment of all contracts, and for the faithful accounting for and handling of produce by such handler, and for payment to the producer of the net proceeds of all consignments and sales. Any producer claiming to be injured by the fraud, deceit or willful negligence of any commission merchant or contractor, or by his failure to comply with this article or with the terms of a written contract between such parties, may bring action on the bond against both principal and surety in any court of competent jurisdiction and may recover the damages found by the court to be caused by such acts complained of. (1941, c. 359, s. 3.)

§ 106-499. Contracts between handlers and producers; approval of Commissioner.—No handler shall enter into any written contract with a producer in North Carolina, for the production, delivery, or sale of farm products, until he files with the Commissioner of Agriculture a true copy of the contract and it is examined and approved by the Commissioner. The Commissioner may withhold his approval in his discretion if he is of the opinion that the contract is illegal or unfair to the producer, or that the contractor is insolvent or financially irresponsible, or if for any other cause it reasonably appears to him that the contract in question might defeat the purpose of this article. (1941, c. 359, s. 4.)

§ 106-500. Additional powers of Commissioner to enforce article.—In order to enforce this article, the Commissioner of Agriculture, upon his own motion or upon the verified complaint of any producer, shall have the following additional powers:

(1) To inspect or investigate transactions for the sale or delivery of farm products to persons acting as handlers; to require verified reports and accounts of all authorized handlers; to examine books, accounts, memoranda, equipment, warehouses, storage, transportation and other facilities, farm products and other articles connected with the business of the handlers; to inquire into failure or refusal of any handlers to accept produce under his contracts and to pay for it as agreed;

(2) To hold hearings after due notice to interested parties and opportunity to all to be heard; to administer oaths, take testimony and issue subpoenas; to require witnesses to bring with them relevant books, papers, and other evidence; to compel testimony; to make written findings of fact and on the basis of these findings to issue orders in controversies before him, and to revoke the permits of persons disobeying the terms of this article or of rules, regulations, and orders made by the Board or the Commissioner. Any party disobeying any order or subpoena of the Commissioner shall be guilty of contempt, and shall be certified to the superior court for punishment. Any party may appeal to the superior court from any final order of the Commissioner;

(3) To issue all such rules and regulations, with the approval of the Board, and to appoint necessary agents and to do all other lawful things necessary to carry out the purposes of this article. (1941, c. 359, s. 5.)

§ 106-501. Violation of article or rules made misdemeanor. — Any person who violates the provisions of this article or the rules and regulations promulgated thereunder shall be guilty of a misdemeanor, and shall be punishable by a fine of not more than five hundred dollars ($500.00) or by imprisonment for not more than one year, or both. (1941, c. 359, s. 6.)

ARTICLE 45.

Agricultural Societies and Fairs.

Part 1. State Fair.

§ 106-502. Land set apart.—For the purpose of the operating of a State Fair, expositions and other projects which properly represent the agricultural, manufacturing, industrial and other interests of the State of North Carolina, there is hereby dedicated and set apart two hundred acres of land owned by the State or any department thereof within five miles of the State Capitol, the particular acreage to be selected, set apart, and approved by the Governor and Council of the State of North Carolina. (1927, c. 209, s. 1; 1959, c. 1186, s. 1.)

§ 106-503. Board of Agriculture to operate fair.—The State Fair and other projects provided for in G.S. 106-502, shall be managed, operated and conducted by the Board of Agriculture established in G.S. 106-502. To that end, said Board of Agriculture shall, at its first meeting after the ratification of this section, take over said State Fair, together with all the lands, buildings, machinery, etc., located thereon, now belonging to said State Fair and shall operate said State Fair and other projects with all the authority and power conferred upon the former board of directors, and it shall make such rules and regulations as it may deem necessary for the holding and conducting of said fair and other projects, and/or lease said fair properties so as to provide a State Fair. (1931, c. 360, s. 3; 1959, c. 1186, s. 2.)

Editor's Note.—Section 4 of the 1959 amendatory act provides: "All actions heretofore taken by the manager of the North Carolina State Fair in the operation of projects on the fair grounds at times other than the annual dates of the State Fair are confirmed, ratified and validated."

§ **106-503.1. Board authorized to construct and finance facilities and improvements for fair.**—(a) Borrowing Money and Issuing Bonds.—For the purpose of building, enlarging and improving the facilities on the properties of the State Fair, the State Board of Agriculture is hereby empowered and authorized to borrow a sum of money not to exceed one hundred thousand dollars ($100,000.00), and to issue revenue bonds therefor, payable in series at such time or times and bearing such rate of interest as may be fixed by the Governor and Council of State: Provided, that no part of the payments of the principal or interest charges on said loan shall be made out of the general revenue of the State of North Carolina, and the credit of the State of North Carolina and the State Department of Agriculture or the agricultural fund, other than the revenue of the State Fair funds, shall not be pledged either directly or indirectly for the payment of said principal or interest charges. The receipts, funds, and any other State Fair assets may be pledged as security for the payment of any bonds that may be issued.

(b) Contracts and Leases; Pledge of Gate Receipts, etc.—For the further purpose of acquiring, constructing, operating and financing said properties and facilities on the North Carolina State Fair grounds, the Board of Agriculture may enter into such agreements, contracts and leases as may be necessary for the purpose of this section, and may pledge, appropriate, and pay such sums out of the gate receipts or other revenues coming to the State Board of Agriculture from the operation of any facilities of the State Fair as may be required to secure, repay, or meet the principal and interest charges on the loan herein authorized.

(c) Gifts and Endowments.—The State Board of Agriculture may receive gifts and endowments, whether real estate, moneys, goods or chattels, given or bestowed upon or conveyed to them for the benefit of the State Fair, and the same shall be administered in accordance with the requirements of the donors. (1945, c. 1009; 1959, c. 1186, s. 3.)

§ **106-504. Lands dedicated by State may be repossessed at will of General Assembly.**—Any lands which may be dedicated and set apart under the provisions of this article may be taken possession of and repossessed by the State of North Carolina, at the will of the General Assembly. (1927, c. 209, s. 4(a).)

Part 2. County Societies.

§ **106-505. Incorporation; powers and term of existence.**—Any number of resident persons, not less than ten, may associate together in any county, under written articles of association, subscribed by the members thereof, and specifying the object of the association to encourage and promote agriculture, domestic manufactures, and the mechanic arts, under such name and style as they may choose, subject to any other applicable provisions of law, and thereby become a body corporate with all the powers incident to such a body, and may take and hold such property, both real and personal, as may be needful to promote the objects of their association.

Whenever any such association is formed subsequent to April 1, 1949, a copy of the articles of incorporation shall be filed with the Secretary of State, together with any other information the Secretary of State may require. A fee of ten dollars ($10.00) shall be paid to the Secretary of State when such articles are filed. Upon receipt of such articles in proper form, and such other information as may be required, and the filing fee, the Secretary of State shall issue a charter of incorporation.

The corporate existence shall continue as long as there are ten members, during the will and pleasure of the General Assembly. (1852, c. 2, ss. 1, 2, 3; R. C., c. 2, ss. 6, 7; Code, s. 2220; Rev., ss. 3868, 3869; C. S., s. 4941; 1949, c. 829, s. 2.)

Cross Reference.—As to power of board of county commissioners to promote farmers' cooperative demonstration work, see § 153-9, subdivision (35).

§ **106-506. Organization; officers; new members.**—Such society shall be organized by the appointment of a president, two vice-presidents, a secretary and treasurer, and such other officers as they may deem proper, who shall thereafter be chosen annually, and hold their places until others shall be appointed. And the society may from time to time, on such conditions as may be prescribed, receive other members of the corporation. (1852, c. 2, s. 3; R. C., c. 2, s. 7; Code, s. 2221; Rev., s. 3869; C. S., s. 4942.)

§ **106-507. Exhibits exempt from State and county taxes.** — Any society or association organized under the provisions of this chapter, desiring to be exempted from the payment of State, county, and city license taxes on its exhibits, shows, attractions, and amusements, shall each year, not later than sixty (60) days prior to the opening date of its fair, file an application with the Commissioner of Revenue for a permit to operate without the payment of said tax; said application shall state the various types of exhibits and amusements for which the exemption is asked, and also the date and place they are to be exhibited. The Commissioner of Revenue shall immediately refer said application to the Commissioner of Agriculture for approval or rejection. If the application is approved by said Commissioner of Agriculture, the Commissioner of Revenue shall issue a permit to said society or association authorizing it to exhibit within its fair grounds and during the period of its fair, without the payment of any State, county, or city license tax, all exhibits, shows, attractions, and amusements as were approved. Provided, however, that the Commissioner of Revenue shall have the right to cancel said permit at any time upon the recommendation of said Commissioner of Agriculture. Any society or association failing to so obtain a permit from the Commissioner of Revenue or having its permit canceled shall pay the same State, county, and city license taxes as may be fixed by law for all other persons or corporations exhibiting for profit within the State shows, carnivals, or other attractions. (1905, c. 513, s. 2; Rev., s. 3871; C. S., s. 4944; 1935, c. 371, s. 107; 1949, c. 829, s. 2.)

§ **106-508. Funds to be used in paying premiums.**—All moneys so subscribed, as well as that received from the State treasury as herein provided, shall after paying the necessary incidental expenses of such society, be annually paid for premiums awarded by such societies, in such sums and in such way and manner as they severally, under their bylaws, rules and regulations, shall direct, on such live animals, articles of production, and agricultural implements and tools, domestic manufacturers, mechanical implements, tools and productions as are of the growth and manufacture of the county or region, and also such experiments, discoveries, or attainments in scientific or practical agriculture as are made within the county or region wherein such societies are respectively organized. (1852, c. 2, s. 7; R. C., c. 2, s. 9; Code, s. 2223; Rev., s. 3873; C. S., s. 4945; 1949, c. 829, s. 2.)

§ **106-509. Annual statements to State Treasurer.**—Each agricultural society entitled to receive money from the State Treasurer shall, through its treasurer, transmit to the Treasurer of the State, in the month of December or before, a statement showing the money received from the State, the amount received from the members of the society for the preceding year, the expenditures of all such sums, and the number of the members of such society. (1852, c. 2, s. 8; R. C., c. 2, § 10; Code, s. 2224; Rev., s. 3874; C. S., s. 4946.)

§ **106-510. Publication of statements required.** — Each agricultural society receiving money from the State under this chapter shall, in each year, publish at its own expense a full statement of its experiments and improvements, and reports of its committees, in at least one newspaper in the State; and evidence that the requirements of this chapter have been complied with shall be furnished to the State Treasurer before he shall pay to such society the sum of fifty dollars for the benefit of such society for the next year. (1852, c. 2, s. 9; R. C., c. 2, s. 11; Code, s. 2225; Rev., s. 3875; C. S., s. 4947.)

§ **106-511. Records to be kept; may be read in evidence.**—The secretary of such society shall keep a fair record of its proceedings in a book provided for that purpose, which may be read in evidence in suits wherein the corporation may be a party. (1952, c. 2, s. 5; R. C., c. 2, s. 12; Code, s. 2226; Rev., s. 3876; C. S., s. 4948.)

Part 3. Protection and Regulation of Fairs.

§ **106-512. Lien against licensees' property to secure charge.** — All agricultural fairs which shall grant any privilege, license, or concession to any person, persons, firm, or corporation for vending wares or merchandise within any fair grounds, or which shall rent any ground space for carrying on any kind of business in such fair grounds, either upon stipulated price or for a certain percent of the receipts taken in by such person, persons, firm, or corporation, shall have the right to retain possession of and shall have a lien upon any or all the goods, wares, fixtures, and merchandise or other property of such person, persons, firm, or corporation until all charges for privileges, licenses, or concessions are paid, or until their contract is fully complied with. (1915, c. 242, s. 1; C. S., s. 4950.)

§ **106-513. Notice of sale to owner.**—Written notice of such sale shall be served on the owner of such goods, wares, merchandise, or fixtures or other property ten days before such sale, if he or it be a resident of the State, but if a nonresident of the State, or his or its residence be unknown, the publication of such notice for ten days at the courthouse door and three other public places in the county shall be sufficient service of the same. (1915, c. 242, s. 2; C. S., s. 4951.)

§ **106-514. Unlawful entry on grounds a misdemeanor.**—If any person, after having been expelled from the fair grounds of any agricultural or horticultural society, shall offer to enter the same again without permission from such society; or if any person shall break over the enclosing structure of said fair grounds and enter the same, or shall enter the enclosure of said fair grounds by means of climbing over, under or through the enclosing structure surrounding the same, or shall enter the enclosure through the gates without the permission of its gatekeeper or the proper officer of said fair association, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1870-1, c. 184, s. 3; Code, s. 2795; 1901, c. 291; Rev., s. 3669; C. S., s. 4952.)

§ **106-515. Assisting unlawful entry on grounds a misdemeanor.**—It shall be unlawful for any person or persons to assist any other person or persons to enter upon the grounds of any fair association when an admission fee is charged, by assisting such other person or persons to climb over or go under the fence or by pulling off a plank or to enter the enclosed grounds by any trick or device or by passing out a ticket or a pass or in any other way. Any violation of this section shall be a misdemeanor and punishable by a fine not exceeding twenty dollars or imprisonment not exceeding ten days. (1915, c. 242, ss. 3, 4; C. S., s. 4953.)

§ **106-516. Vendors and exhibitors near fairs to pay license.**—Every person, firm, officer, or agent of any corporation who shall temporarily expose for sale any goods, wares, foods, soft drinks, ice cream, fruits, novelties, or any other kind of merchandise, or who shall operate any merry-go-round, Ferris wheel, or any other device for public amusement, within one fourth of a mile of any agricultural fair during such fair, shall pay a tax of one hundred dollars in each county in which he shall carry on such business, whether as a principal or agent: Provided, this section shall not apply to any business established sixty days prior to the beginning of such fair. (1915, c. 242, s. 5; C. S., s. 4954.)

§ **106-516.1. Carnivals and similar amusements not to operate without permit.**—Every person, firm, or corporation engaged in the business of a carnival company or a show of like kind, including menageries, merry-go-rounds, Ferris wheels, riding devices, circus and similar amusements and enterprises operated and conducted for profit, shall, prior to exhibiting in any county annually staging an agricultural fair, apply to the sheriff of the county in which the exhibit is to be held for a permit to exhibit. The sheriff of the county shall issue a permit without charge; provided, however, that no permit shall be issued if he shall find the requested exhibition date is less than thirty days prior to a regularly advertised agricultural fair and so in conflict with G.S. 105-39. Exhibition without a permit from the sheriff of the county in which the exhibition is to be held shall constitute a misdemeanor and be punished by a fine or imprisonment, or both, in the discretion of the court: Provided, that nothing contained in this section shall prevent veterans' organizations and posts chartered by Congress or organized and operated on a state-wide or nation-wide basis from holding fairs or tobacco festivals on any dates which they may select if such fairs or festivals have heretofore been held as annual events. (1953, c. 854; 1963, c. 1127.)

Local Modification. — Franklin: 1953, c. 854; Greene: 1957, c. 738.

Editor's Note.—The 1963 amendment inserted the word "circus" in the first sentence.

§ **106-517. Application for license to county commissioners.**—Every such person mentioned in § 106-516 shall apply in advance for a license to the board of county commissioners of the county in which he proposes to peddle, sell, or operate, and the board of county commissioners may in their discretion issue license upon the payment of the tax to the sheriff, which shall expire at the end of twelve months from its date. (1915, c. 242, s. 6; C. S., s. 4955.)

§ **106-518. Unlicensed vending, etc., near fairs a misdemeanor.**—Any person violating the provisions of §§ 106-516 and 106-517 shall be guilty of a misdemeanor, punishable by a fine not to exceed fifty dollars or imprisonment not to exceed thirty days, at the discretion of the court. (1915, c. 242, s. 7; C. S., s. 4956.)

§ **106-519. Commissioners may refuse to license shows within five miles.**—The county commissioners of any county in North Carolina in which there is a regularly organized agricultural fair may refuse to allow any circus, menagerie, wild west show, dog and pony show, or carnival show, to exhibit within five miles of such fair from its beginning to its ending: Provided, that notice is given the sheriff by the commissioners of said county not to issue such license to said entertainments sixty days prior to the date of such exhibition. (1913, c. 163, s. 1; C. S., s. 4957.)

§ **106-520. Local aid to agricultural, animal, and poultry exhibits.** —Any city, town, or county may appropriate not to exceed one hundred dollars to aid any agricultural, animal, or poultry exhibition held within such city, town, or county. (1919, c. 135; C. S., s. 4958.)

Local Modification. — Craven: 1955, c. 607, amended by 1957, c. 886; Edgecombe and Nash: 1953, c. 273; city of New Bern: 1955, c. 1125; city of Rocky Mount: 1953, c. 273.

Part 4. Supervision of Fairs.

§ **106-520.1. Definition.**—As used in this article, the word "fair" means a bona fide exhibition designed, arranged and operated to promote, encourage and improve agriculture, horticulture, livestock, poultry, dairy products, mechanical fabrics, domestic economy, and 4-H Club and Future Farmers of America activities, by offering premiums and awards for the best exhibits thereof or with respect thereto. (1949, c. 829, s. 1.)

§ **106-520.2. Use of "fair" in name of exhibition.**—It shall be unlawful for any person, firm, corporation, association, club, or other group of persons to use the word "fair" in connection with any exhibition, circus, show, or other variety of exhibition unless such exhibition is a fair within the meaning of G.S. 106-520.1. (1949, c. 829, s. 1.)

§ **106-520.3. Commissioner of Agriculture to regulate.** — The Commissioner of Agriculture, with the advice and approval of the State Board of Agriculture, is hereby authorized, empowered and directed to make rules and regulations with respect to classification, operation and licensing of fairs, so as to insure that such fairs shall conform to the definition set out in G.S. 106-520.1, and shall best promote the purposes of fairs as set out in such definition. Every fair, and every exhibition using the word "fair" in its name, except fairs classified by the Commissioner of Agriculture as noncommercial community fairs, must comply with the standards, rules and regulations set up and promulgated by the Commissioner of Agriculture, and must secure a license from the Commissioner of Agriculture before such exhibition or fair is staged or operated. No license shall be issued for any such exhibition or fair unless it meets the standards and complies with the rules and regulations of the Commissioner of Agriculture with respect thereto. (1949, c. 829, s. 1.)

§ **106-520.4. Local supervision of fairs.**—No county or regional fairs shall be licensed to be held unless such fair is operated under supervision of a local board of directors who shall employ appropriate managers, who shall be responsible for the conduct of such fair, and otherwise comply with the standards, rules and regulations promulgated by the Commissioner of Agriculture. The Commissioner of Agriculture, with the advice and approval of the State Board of Agriculture, shall make rules and regulations requiring county and regional fairs to emphasize agricultural, educational, home and industrial exhibits by providing adequate premiums. (1949, c. 829, s. 1.)

§ **106-520.5. Reports.**—Every fair shall make such reports to the Commissioner of Agriculture, as said Commissioner may require. (1949, c. 829, s. 1.)

§ **106-520.6. Premiums and premium lists supplemented.**—The State Board of Agriculture may supplement premiums and premium lists for county and regional fairs and the North Carolina State Fair, and improve and expand the facilities for exhibits at the North Carolina State Fair, at any time or times, out of any funds which may be available for such purposes. (1949, c. 829, s. 1.)

§ **106-520.7. Violations made misdemeanor.**—Any person who violates any provision of G.S. 106-520.1 through G.S. 106-520.6 is guilty of a misdemeanor punishable by a fine or imprisonment in the discretion of the court. (1949, c. 829, s. 1.)

ARTICLE 46.

Erosion Equipment.

§ **106-521. Counties authorized to provide farmers with erosion equipment.**—The county commissioners in the several counties of the State are hereby authorized and empowered to purchase the necessary equipment to be used as provided in this article by farmers in the cultivation of their lands in such manner as may best tend to prevent erosion; and they are authorized to put such equipment as they deem necessary for the purpose in the hands of farmers who may apply for the same, either by way of resale to the said farmers, or upon a rental basis, or by guarantee, as may in their judgment be deemed best, of the purchase price of the said equipment directly sold to the said farmers. (1935, c. 172, s. 1.)

Local Modification.—Granville: 1953, c. 1240.

§ **106-522. Application for assistance.**—Any person or persons, corporation or concern, engaged in the cultivation of a farm or farms in this State may apply to the county commissioners for assistance under this article, stating in the said application as nearly as may be the size or area of the cultivated lands, its condition, the kind of soil, the amount of erosion, if any, the topography of the farm, its present manner of drainage and the kinds of crops usually cultivated thereon. It shall also state what means have been used heretofore, if any, to prevent soil erosion, and specifically the extent to which erosion now exists upon the premises. At any time subsequent to the said application, if relief is extended to him, he shall, when so requested by the said county commissioners or any other person delegated by them to receive the information, make detailed reports as to the condition of his said cultivated lands, the extent to which provision has been made thereon to prevent soil erosion, with the results of same. There shall also be stated in the said application the kind and quantity of equipment which, in the judgment of the applicant, is necessary for use upon his farm. (1935, c. 172, s. 2.)

§ **106-523. Investigation and extending relief.**—Upon the filing of such application the county commissioners shall cause due investigation to be made with reference thereto, and for their guidance; shall fully consider the same and if, in their opinion, the relief asked for should be extended, they shall thereupon proceed to supply or have supplied such equipment as in their judgment may be necessary under the circumstances, as provided in this article. (1935, c. 172, s. 3.)

§ **106-524. Purchase of equipment and furnishing to farmers; notes and security from applicants; rental contracts; guarantee of payment.**—The county commissioners are authorized and empowered to purchase the equipment by them deemed to be necessary and supply the applicant therewith, upon such terms and conditions of purchase, rental or repayment as may be deemed by them just and proper, and which will save the county from loss in the matter. To that end, they are authorized to accept from the applicant such notes and security, if any by them are deemed necessary, or shall make with them such rental contracts as may be reasonably prudent and safe in the premises. They are further authorized and empowered, when in their judgment it may be deemed advisable, to guarantee the payment to the seller, for such equipment as may be directly purchased by the applicant for the use aforesaid: Provided, however, that the purchase of the said equipment has been previously approved by the county commissioners. (1935, c. 172, s. 4.)

§ **106-525. Guarantee of payment where equipment purchased by federal agencies.**—Where the said equipment may be purchased by any federal agency and by it furnished to any person, persons, firm or corporation engaged in the actual cultivation of the soil, the county commissioners are authorized, under such terms and conditions as to them may seem advisable, and as shall conserve the public interest and be just and proper to the county, to guarantee the payment of the purchase price of such equipment in full or the interest upon the obligations made in their purchase, and may do so in full or in part. (1935, c. 172, s. 5.)

§ **106-526. Expense of counties extending relief made lien on premises of applicant.**—In the event the county commissioners shall extend any relief under this article, to the extent of the money furnished or the obligation of the county with respect thereto, the same shall be a lien upon the premises, lands and tenements of the owner and applicant for such relief, securing the repayment of the funds furnished by the county and securing the county against any loss by reason of its obligation in any respect, the said lien to be foreclosed in all respects as provided in the law for deeds of trust or real estate mortgages: Provided, however, that in case the county itself has entered into an obligation in order to extend to any persons herein named the relief provided in this article, the county shall not be postponed in its relief until loss is actually incurred by it, but may proceed in accordance with the contract and agreement made with the applicant for relief, and when the obligations of the county in any respect are due: Provided, further, that the lien created by this section shall not be effective as against innocent purchasers for value unless and until notice of such lien shall be docketed in the office of the clerk of the superior court of the county in which the land lies in the manner and form provided by law for perfecting laborer's or mechanic's liens against real property. (1935, c. 172, s. 6.)

§ **106-527. Counties excepted.**—This article shall not apply to the counties of Alexander, Alleghany, Ashe, Avery, Bladen, Buncombe, Camden, Columbus, Cumberland, Davie, Gates, Haywood, Hyde, Jackson, Lincoln, Macon, Madison, Moore, New Hanover, Pamlico, Pasquotank, Rutherford, Sampson, Transylvania, Washington, Watauga, Wilkes, and Yadkin. (1935, c. 172, s. 7; 1937, c. 25.)

ARTICLE 47.

State Marketing Authority.

§ **106-528. State policy and purpose of article.** — It is declared to be the policy of the State of North Carolina and the purpose of this article to promote, encourage and develop the orderly and efficient marketing of products of the home, farm, sea and forest; to establish, maintain, supervise and control, with the cooperation of counties, cities and towns, centrally located markets for the sale and distribution of such products, so as to promote a steady flow of commodities, properly graded and labelled, into the channels of trade at the time and place to enable the producer to get the market price and the consumer to get a product in keeping with the price paid. (1941, c. 39, s. 1.)

§ **106-529. State Marketing Authority created; members and officers; commodity advisers; meetings and expenses.** — To secure these aims, there is hereby created an incorporated public agency of the State, to be known as the State Marketing Authority, hereinafter referred to as the "Authority." It shall consist of the members of the State Board of Agriculture, and the Commissioner of Agriculture shall be the chairman. They shall perform the duties and exercise the powers herein set out as a part of their official duties as members of the Board of Agriculture. The Governor shall appoint from time to time commodity advisers to plan with the Authority the programs undertaken in their respective communities. The Authority shall elect and prescribe the duties of a secretary-treasurer, who shall not be a member of the Authority. He shall give bond in such amount as the Authority shall determine in some reliable surety company doing business in North Carolina, and the Authority shall pay the premiums. The Authority shall meet in regular session annually at a fixed place and date, and shall meet in special session at such other times and places as the chairman may request. The members shall receive no salary, but shall receive actual expenses plus seven dollars per day for actual time spent in performing their duties. (1941, c. 39, s. 2.)

§ **106-530. Powers of Authority.**—The Authority shall have the following powers:

(1) To sue and be sued in its corporate name in any court or before any administrative agency of the State or of the United States, and to enter into agreements with the United States Department of Agriculture or any other legally constituted State or federal agency, or with any county, city or town in the furtherance of the purposes of this article.

(2) To plan, build, construct, or cause to be built or constructed, or to purchase, lease or acquire the use of any warehouses or other facilities that may be necessary for the successful operation by the Authority of wholesale markets for products of the home, farm, sea and forest at chosen points in North Carolina. The Authority may make such contracts as may be needed for these purposes. In no case shall the Authority be responsible for any rent except from the income of the market in excess of other operating expenses. The Authority may select and employ for each market capable managers, who shall be familiar with the problems of the grower and the distributor, and of the marketing of farm products, and who shall have the business ability and training to operate a market and to plan for its proper development and growth in order best to serve the interests of producers, distributors, consumers in the area, and the general public. The managers may employ assistants and agents with the approval of the Authority. The Authority may make such regulations as will promote the policy of this article, as to the manner in which the markets shall be operated, the business conducted, and stalls sublet to dealers.

(3) To fix the terms upon which individual, cooperative or corporate wholesale merchants, warehouses or warehousemen may place their facilities or services under the supervision and regulation of the Authority. The Authority may extend to any such wholesale merchants, warehouses or warehousemen marketing benefits in the form of inspection, market informational and news service and may make regulations as to the operation of such facilities or services and as to forms, reports, handling, grades, weights, packages, labels, and other standards for the products handled by such merchants, warehouses or warehousemen.

(4) To fix rentals and charges for each type of service or facility in the markets under its control, taking into consideration the cost of such facility or service, the interest and amortization period required, a proper relationship between types of operators in the market, cost of operation, and the need for reasonable reserves for repairs, depreciation, expansion, and similar items. These rentals and charges shall not bring any profit to any agency over and above the costs of operation, necessary reserves, and debt service.

(5) To issue permits to itinerant dealers in intrastate commerce, who express a willingness to come under the program of the State Marketing Authority. Such permits shall enable the holders to solicit orders and

to buy and sell produce under the rules and regulations of the Authority and in conformance with §§ 106-185 to 106-196 and not inconsistent with the United States Perishable Agricultural Commodities Act, one thousand nine hundred and thirty (46 Stat. 531).

(6) To issue bonds and other securities to obtain funds to acquire, construct, and equip warehouses to be used in carrying out the purposes of this article. The bonds shall be entitled "North Carolina Marketing Authority Bonds" and shall be issued in such form and denominations and shall mature at such time or times, not exceeding thirty years after their date, and shall bear such interest, not exceeding five percent per annum, payable either annually or semiannually, as the Authority shall determine. They shall be signed by the chairman of the Authority, and the corporate seal affixed or impressed upon each bond and attested by the secretary-treasurer of the Authority. The coupons shall bear the facsimile signature of the chairman officiating when the bonds are issued. Any issue of these bonds and notes may be sold publicly, or at private sale for not less than par to the Reconstruction Finance Corporation or other State or federal agency or may be given in exchange to any county, city, town or individual for the lease or purchase of property to be used by the Authority. To secure such indebtedness, the Authority may give mortgages or deeds of trust, executed in the same manner as the bonds, on the property purchased or acquired, and may pledge the revenues from the markets in excess of operating expenses, interest and insurance: Provided, that each market shall be operated on a separate financial basis, and only such revenues and properties of each separate market shall be liable for the obligations of that market. No obligations incurred by the Authority shall be obligations of the State of North Carolina or any of its political subdivisions, or a burden on the taxpayers of the State or any political subdivision. This does not prevent the State or any of its agencies, departments or institutions, or any private or public agency from making a contribution to the Authority, in money or services or otherwise.

Bonds and notes issued under this article shall be exempt from all State, county or municipal taxes or assessments of any kind; the interest shall not be taxable as income, nor shall the notes, bonds, nor coupons be taxable as part of the surplus of any bank, trust company or other corporation.

Any resolution or resolutions authorizing any bonds shall contain provisions which shall be a part of the contract with the holders of the bonds, as to:

a. Pledging the fees, rentals, charges, dues, tolls, and inspection and sales fees, and other revenues to secure payment of the bonds;
b. The rates of the fees or tolls to be charged for the use of the facilities of the warehouse or warehouses, and the use and disposition of the revenues from its operation;
c. The setting aside of reserves or working funds, and the regulation and disposition thereof;
d. Limitations on the purposes to which the proceeds of sale of any issue of bonds may be applied;
e. Limitations on the issuance of additional bonds; and
f. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given.

(7) To accept grants in aid or free work.
(8) To adopt, use and alter a corporate seal.
(9) To dispossess tenants for nonpayment of rent and for failure to abide by the regulations of the Authority.
(10) To hire necessary agents, engineers, and attorneys, and to do all things necessary to carry out the powers granted by this article. (1941, c. 39, s. 3.)

§ **106-531. Discrimination prohibited; restriction on use of funds.**—The Authority shall not permit:

(1) Any discrimination against the sale, on any of the markets under their control, of any farm product because of type of operator or area of production.
(2) The use of any of its funds for any purpose other than for the support, necessary expansion, and operation of this State marketing system, or the use of any of its funds to establish any retail market or to build or furnish more than one market in any town. (1941, c. 39, s. 4.)

§ **106-532. Fiscal year; annual report to Governor.** — The Authority shall operate on a fiscal year, which shall be from July first to June thirtieth. The Commissioner of Agriculture shall file an annual report with the Governor containing a statement of receipts and disbursements and the purposes of such disbursements, and a complete statement of the financial condition of the Authority, and an account of its activities for the year. (1941, c. 39, s. 5.)

§ **106-533. Application of revenues from operation of warehouses.**—All rentals and charges, fees, tolls, storage and sales commissions and revenues of any sort from operation of each warehouse shall be applied to the payment of the cost of operating and administering the warehouse and market facilities including interest on bonds and other evidences of indebtedness issued therefor, and the cost of insurance against loss by injury to persons or property, and the balance shall be paid to the secretary-treasurer of the Authority and be used to provide a sinking fund to pay at or before maturity all bonds and notes and other evidences of indebtedness incurred for and on behalf of the building, constructing, maintaining and operating of each warehouse. A separate sinking fund account shall be kept for each market, and no market shall be liable for the obligations of any other market. (1941, c. 39, s. 6.)

§ **106-534. Exemption from taxes and assessments.**—The Authority shall be regarded as performing an essential governmental function in constructing, operating or maintaining these markets, and shall be required to pay no taxes or assessments on any property acquired or used by it for the purposes herein set out. (1941, c. 39, s. 7.)

ARTICLE 48.

Relief of Potato Farmers.

§ **106-535. Guaranty of minimum price to growers of Irish potatoes under share planting system.**—From and after March 15, 1941, every person, firm, association or corporation engaged in the practice of supplying growers of Irish potatoes in this State with seed potatoes and fertilizer and other supplies for the purpose of growing a crop of Irish potatoes under the system commonly known as the share planting system and who enter into a contract with such grower and/or growers on or before planting them to furnish such grower with seed potatoes, fertilizer or other necessary supplies, or to perform services in connection with the gathering of such crop and marketing the same, shall at the time of entering into such contract, agree in writing, with such grower that he or it will guarantee that the grower shall receive at the time such potatoes are marketed an amount of not less than ten dollars ($10.00) for each bag of seed potatoes planted by the grower or growers from such person, firm, association or corporation who, under the agreement, furnished such seed potatoes and other supplies to the grower or growers thereof. (1941, c. 354, s. 1.)

Local Modification. — Bladen, Durham, Greene, Lenoir, Pender, Randolph, Rockingham, Sampson and Union: 1941, c. 354, s. 5.

§ **106-536. Additional net profits due grower not affected.**—The minimum amount to be paid the grower by those furnishing said supplies under the terms of this article shall in nowise affect any additional net profit due the grower, should any such additional profits be shown. (1941, c. 354, s. 2.)

§ **106-537. Minimum payments only compensation for labor and use of equipment, land, etc.** — The payment of the stipulated ten dollars ($10.00) per bag of said seed potatoes furnished said grower or growers by any firm, person, association or corporation shall be compensation only for labor and work done and for the use of any animal or machine and equipment used or furnished by said grower or growers, and also use of land in growing said potato crop, and this amount shall be paid to said grower from returns from said crops so produced; and the said ten dollars ($10.00) shall not be computed as any part of any other expenses furnished by said person, firm, association or corporation furnishing other materials or supplies for the purpose of said share planting. (1941, c. 354, s. 3.)

§ **106-538. Time of payments; article not applicable to landlord-tenant contracts.**—The said sum of ten dollars ($10.00) per bag of seed potatoes shall be paid to said grower or growers by said firm, person, association or corporation as herein provided, for share planting of potatoes, not later than thirty (30) days after the delivery of last potatoes grown under the share planting contract existing between said grower or growers and the said person, firm, association or corporation: Provided, that nothing in this article shall apply to contracts entered into between landowners and their respective tenants. (1941, c. 354, s. 4.)

ARTICLE 49.

Poultry.

§ **106-539. National poultry improvement plan.**—In order to promote the poultry industry of the State, the Department of Agriculture is hereby authorized to cooperate with the United States Department of Agriculture in the operation of the national poultry improvement plan. (1945, c. 616, s. 1.)

§ **106-540. Rules and regulations.** — The State Board of Agriculture is hereby authorized to make such regulations as may be necessary, after public hearing following due public notice, to carry out the provisions of said national poultry improvement plan and to promulgate regulations setting up minimum standards for the operation of public hatcheries and to regulate chick dealers and jobbers and to provide standards and to regulate the shipping into this State of baby chicks, turkey poults, and hatching eggs and for the control and eradication of contagious and infectious diseases of poultry. (1945, c. 616, s. 2.)

§ **106-541. Definitions.**—For the purpose of this article, a public hatchery shall be defined as any establishment that artificially hatches and sells or offers for sale to the public baby chicks or the young of any domestic fowl under six weeks of age, or hatching eggs, or that does custom hatching. A chick dealer or jobber shall mean any person, firm or corporation that buys baby chicks or turkey poults and sells or offers same for sale. The terms "mixed chicks" or "assorted chicks" shall mean chicks of two or more distinct breeds. The term "crossbred chicks" shall mean chicks produced from eggs from purebred females of a distinct breed mated to a purebred male of distinct breed. (1945, c. 616, s. 3.)

§ **106-542. Hatcheries and chick dealers to obtain permit to operate.**—No person, firm or corporation shall operate a public hatchery and no chick dealer or jobber shall operate within this State without first obtaining a permit from the Department of Agriculture to so operate. Said permit may be cancelled for violation of this article or the regulations promulgated thereunder. Any person who is refused a permit or whose permit is revoked may appeal within thirty (30) days of such refusal or revocation to any court of competent jurisdiction. (1945, c. 616, s. 4.)

§ **106-543. Requirements of national poultry improvement plan must be met.**—All baby chicks, turkey poults and hatching eggs sold or offered for sale shall originate in flocks that meet the requirements of the national poultry improvement plan as administered by the North Carolina Department of Agriculture and regulations issued by authority of this article for the control of pullorum disease: Provided, that nothing in this article shall require any hatchery to adopt the national poultry improvement plan. (1945, c. 616, s. 5.)

§ **106-544. Shipments from out of State.** — All baby chicks, turkey poults and hatching eggs shipped or otherwise brought into this State shall originate in flocks that meet the minimum requirements of pullorum disease control provided for in this article and the regulations issued by authority of this article and shall be accompanied by a certificate approved by the official state agency or the livestock sanitary officials of the state of origin, certifying same. (1945, c. 616, s. 6.)

§ **106-545. False advertising.**—No public hatchery, chick dealer or jobber shall use false or misleading advertising in the sale of their products. (1945, c. 616, s. 7.)

§ **106-546. Notice describing grade of chicks to be posted.**—All hatcheries, chick dealers and jobbers offering chicks for sale to the public shall post in a conspicuous manner in their place of business a poster furnished by the Department of Agriculture describing the grade of chicks approved by the Department of Agriculture. (1945, c. 616, s. 8.)

§ **106-547. Records to be kept.**—Every public hatchery, chick dealer or jobber shall keep such records of operation as the regulations of the Department of Agriculture may require for the proper inspection of said hatchery, dealer or jobber. (1945, c. 616, s. 9.)

§ **106-548. Fees.**—For the purpose of carrying out the provisions of this article and the regulations issued thereunder, the Department of Agriculture is authorized to collect annually from every public hatchery a fee not to exceed ten dollars ($10.00) where the egg capacity is not more than fifty thousand (50,000) eggs; twenty dollars ($20.00) where the egg capacity is fifty thousand and one (50,001) to one hundred thousand (100,000) eggs; and thirty dollars ($30.00) where the egg capacity is over one hundred thousand (100,000). Chick dealers and jobbers shall pay a fee of three dollars ($3.00) annually, said fees to be used for the enforcement of this article. The minimum fee for any flock tested shall be five dollars ($5.00) for one hundred birds or less and shall apply also to flocks that are dropped due to heavy infection or other causes. The fee for the first test shall be four cents (4¢) per bird with a charge of two cents (2¢) per bird for the second test and one cent (1¢) per bird for all subsequent tests, during the same season. (1945, c. 616, s. 10.)

§ **106-549. Violation a misdemeanor.**—Any person, firm or corporation who shall willfully violate any provision of this article or any rule or regulation duly established by authority of this article shall be guilty of a misdemeanor. (1945, c. 616, s. 11.)

ARTICLE 49A.

Voluntary Inspection of Poultry.

§ **106-549.1. Short title.**—This article shall be known as the "North Carolina Voluntary Inspection of Poultry Law." (1955, c. 1233, s. 1.)

§ **106-549.2. Definitions.**—The following words, terms, and phrases shall be construed for the purpose of this article as follows:

(1) "Commissioner" means Commissioner of Agriculture of North Carolina.

(2) "Condition and wholesomeness" means the condition of any product and its healthfulness and fitness for human food.

(3) "Identify" means to apply official identification to products or the container thereof.

(4) "Inspector" means any person who is licensed or designated by the State Supervisor of Poultry Inspection to inspect and certify the condition and wholesomeness of poultry products in accordance with the provisions of this article or the rules and regulations made pursuant thereto.

(5) "Official identification" means the symbol represented by a stamp, label, seal, or other device approved by the Commissioner and affixed to any product, or to any container thereto, stating that the product was inspected or graded or both.

(6) "Official plant" means one or more buildings, or parts thereof, comprising a single plant in which the facilities and methods of operation therein have been approved by the Commissioner as suitable and adequate for processing poultry in accordance with the rules and regulations of the Board.

(7) "Person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

(8) "Poultry" means any kind of domesticated bird, including, but not being limited to chickens, turkeys, ducks, pigeons, geese, and guineas.

(9) "Poultry products" means any giblets or any edible part of dressed poultry other than eviscerated poultry or any article of food for human consumption which is prepared in part from any edible portion of dressed poultry or from any product derived wholly from such edible portion.

(10) "Ready-to-cook poultry" means any dressed poultry from which the protruding pinfeathers, vestigial feathers (hair or down as the case may be), head, shanks, crop, oil gland, trachea, esophagus, entrails, reproductive organs and lungs have been removed, and with or without the giblets, is ready to cook without need of further processing. Ready-to-cook poultry also means any cut-up or disjointed portion of poultry. (1955, c. 1233, s. 2.)

§ **106-549.3. Authority to enter into voluntary agreements providing for inspection.**—The Commissioner of Agriculture is hereby granted permission to enter into voluntary agreements with individuals, firms, or corporations operating poultry processing plants in this State in which dressed poultry is processed, cut up, or otherwise handled, for the purpose of establishing official inspection for ready-to-cook poultry and poultry products for condition and wholesomeness. The Commissioner is authorized to cooperate with other branches of the government of the State of North Carolina, or the Secretary of Agriculture of the United States, if in his judgment such an agreement and arrangement for providing inspection service will meet the requirements of the North Carolina poultry industry. (1955, c. 1233, s. 3.)

§ **106-549.4. Rules and regulations.**—The Board of Agriculture is authorized to promulgate and adopt such reasonable rules and regulations as may be necessary to carry out the provisions of this article. These rules and regulations shall include minimum requirements for plant facilities; processing methods and techniques; methods of determining the condition and wholesomeness of poultry, poultry products, or any edible parts thereof; and other administrative factors that may arise in administering this article. (1955, c. 1233, s. 4.)

§ **106-549.5. Who shall be eligible for this service.** — Any person operating a processing plant in North Carolina in accordance with the provisions of this article and the rules and regulations duly adopted by the Board of Agriculture shall be eligible for this service. (1955, c. 1233, s. 5.)

§ **106-549.6. Cost of inspection.**—The cost of this inspection service shall be borne by the person receiving this service. This cost shall include the salary or salaries of the inspector or inspectors assigned to the plant for the purpose of inspecting poultry and poultry products processed or otherwise handled therein. In addition, a reasonable administrative charge may be added to the cost of this service. (1955, c. 1233, s. 6.)

§ **106-549.7. Payment of inspection costs.**—The payment of inspection costs and other costs as provided in this article shall be paid to the North Carolina Department of Agriculture. (1955, c. 1233, s. 7.)

§ **106-549.8. Plant number.**—Upon receiving an application from any person, and after it is determined that the plant, plant facilities, operating procedures and techniques in the plant in which inspection service is requested meet the provisions of this article and the rules and regulations duly adopted by the Board of Agriculture, the Commissioner shall issue the applicant an official plant number for the particular plant or facility in which the service is requested. (1955, c. 1233, s. 8.)

§ **106-549.9. Identifying officially inspected poultry, poultry products, and edible parts thereof.**—The Commissioner is hereby granted authority to issue, approve, or otherwise give permission for poultry, poultry products, and other edible parts to be officially identified with a stamp, label, or other device for all or part of any poultry processed in official plants. This identification shall include, but not be limited to, the official plant number. (1955, c. 1233, s. 9.)

§ **106-549.10. Inspection in official plants.** — All dressed poultry that is eviscerated in an official plant where inspection service is maintained shall be processed in a sanitary manner. Dressed poultry may be eviscerated in such plants without inspections for condition and wholesomeness but uninspected and inspected operations may not be carried on simultaneously except in plants where processing rooms (including packing rooms) are separate or when by other acceptable means effective segregation of inspection and uninspected product is maintained. (1955, c. 1233, s. 10.)

§ **106-549.11. Supervision of inspection program.** — The supervision of this inspection program shall be under the State Veterinarian or person designated by the Commissioner or under the State Veterinarian or the person designated by the Commissioner in cooperation with the supervisor of the inspection program of the United States Department of Agriculture in the event a cooperative arrangement is carried on between the North Carolina Department of Agriculture and the United States Department of Agriculture. (1955, c. 1233, s. 11.)

§ **106-549.12. Who shall inspect poultry.** — The State Veterinarian or person designated by the Commissioner shall have the authority to license, designate, or otherwise determine qualified personnel who may inspect poultry as provided in this article. These inspectors so designated shall have supervision over plant sanitation, inspection of poultry, and carrying out the rules and regulations adopted by the Board of Agriculture. (1955, c. 1233, s. 12.)

§ **106-549.13. Withdrawal of service.** — In the event any person having official inspection service in his plant, or plants, shall fail to abide by the provisions of this article or the rules and regulations adopted by the Board of Agriculture or to terms in the agreement with the North Carolina Department of Agriculture providing for inspection service, the Commissioner shall have the right to withdraw this service. The Commissioner shall also have the authority to reinstate the service after compliance with the rules and regulations have been met. The agreement may also be terminated by the applicant by giving the Commissioner a thirty-day notice. (1955, c. 1233, s. 13.)

§ **106-549.14. Exemptions.** — The provisions of this article shall not apply to any individual raising and processing poultry, ready-to-cook poultry or poultry products without the consent of such individual. (1955, c. 1233, s. 13½.)

ARTICLE 49B.

Voluntary Inspection of Meat, Meat Products and Meat By-Products.

§ **106-549.15. Short title.**—This article shall be known as the North Carolina Voluntary Inspection of Meat, Meat Products and Meat By-Products Law. (1957, c. 1379, s. 1.)

§ **106-549.16. Definitions.** — The following words, terms, and phrases shall be construed for the purpose of this article as follows:

(1) "Approved plant" means a single plant comprised of one or more buildings or parts thereof including facilities and methods of operation which have been inspected and approved as suitable and adequate for processing meat, meat products, and meat by-products in accordance with this article and the rules and regulations promulgated thereunder.

(2) "Commercial processor" means any person, firm or corporation slaughtering livestock or processing meat, meat products, and meat by-products for sale for human consumption, or any person, firm or corporation operating a slaughterhouse or any meat packer, or any nonexempt producer, or any two or more such persons, firms or corporations acting in combination.

(3) "Commissioner" means Commissioner of Agriculture of North Carolina.

(4) "Condition and wholesomeness" means the condition of any product and its healthfulness and fitness for human food.

(5) "Identify" means to apply official identification to products or the container thereof.

(6) "Inspector" means any person who is licensed or designated by the Commissioner to inspect and approve plants, plant facilities, processing methods, and all products processed in such plants in accordance with the provisions of this article and the rules and regulations made pursuant thereto.

(7) "Meat" means the edible part of the muscle of cattle, sheep, swine, rabbits or goats which is skeletal or which is found in the tongue, in the diaphragm, in the heart or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue

and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears.

(8) "Meat by-product" is any edible part other than meat which has been derived from one or more cattle, sheep, swine, rabbits or goats.

(9) "Meat food product" means any article of food, or any article intended for or capable of being used as human food which is derived or prepared, in whole or in substantial and definite part, from any portion of any cattle, sheep, swine, rabbits or goats, except such articles as organotherapeutic substance, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession; provided that the Board of Agriculture shall have the authority to prescribe a definition and identity for any food or class of food in which optional ingredients are permitted.

(10) "Official identification" means a symbol such as a stamp, label, seal, or other device approved by the Commissioner to be affixed to any inspected and approved products or to the container thereof.

(11) "Person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

(12) "Producer" means a person, firm or corporation growing livestock for human consumption, on his own farm or farms controlled by him.

(13) "Retailer" means any person, firm or corporation selling or offering for sale meat, meat products, or meat by-products to the consumer. (1957, c. 1379, s. 2.)

§ **106-549.17. Authority to enter into voluntary agreements providing for inspection.** — The Commissioner of Agriculture is hereby granted permission to enter into voluntary agreements with producers, commercial processors, or retailers in this State for the purpose of establishing official inspection for meat, meat by-products, and meat food products for condition and wholesomeness. The Commissioner is authorized to cooperate with other branches of the government of the State of North Carolina, or the Secretary of Agriculture of the United States, if in his judgment such an agreement and arrangement for providing inspection service will meet the needs of the North Carolina meat industry. (1957, c. 1379, s. 3.)

§ **106-549.18. Rules and regulations.** — The Board of Agriculture is authorized to promulgate and adopt such reasonable rules and regulations as may be necessary to carry out the provisions of this article. These rules and regulations shall include minimum requirement for plant facilities; processing methods and techniques; methods of determining the condition and wholesomeness of meat, meat by-products, meat food products, or any edible parts thereof; and other administrative factors that may arise in administering this article. (1957, c. 1379, s. 4.)

§ **106-549.19. Who shall be eligible for this service.** — Any person, firm, or corporation operating an approved plant in North Carolina in accordance with the provisions of this article and the rules and regulations duly adopted by the Board of Agriculture shall be eligible for this service. (1957, c. 1379, s. 5.)

§ **106-549.20. Cost of inspection.** — The cost of this inspection service shall be borne by the person receiving this service. This cost shall include the salary or salaries of the inspector or inspectors assigned to the plant for the purpose of inspecting meat, meat by-products, and meat food products processed or otherwise handled therein. In addition, a reasonable administrative charge may be added to the cost of this service. (1957, c. 1379, s. 6.)

§ **106-549.21. Payment of inspection costs.** — The payment of inspection costs and other costs as provided in this article shall be paid to the North Carolina Department of Agriculture. (1957, c. 1379, s. 7.)

§ **106-549.22. Plant number.** — Upon receiving an application from any person, and after it is determined that the plant, plant facilities, operating procedures and techniques in the plant which inspection service is requested meets the provisions of this article and the rules and regulations duly adopted by the Board of Agriculture, the Commissioner shall issue the applicant an official plant number for the particular plant or facility in which the service is requested. (1957, c. 1379, s. 8.)

§ **106-549.23. Identifying officially inspected meat, meat by-products, meat food products, and edible parts thereof.**—The Commissioner is hereby authorized to issue, approve, or otherwise give permission for meat, meat by-products, meat food products, and other edible parts to be officially identified with a stamp, label, or other device for all or part of any meat and meat products processed in approved plants. This identification shall include, but not be limited to, the official plant number. (1957, c. 1379, s. 9.)

§ **106-549.24. Inspection of approved plants.** — All dressed meat that is eviscerated in an approved plant where inspection service is maintained shall be processed in a sanitary manner. Dressed cattle, sheep, swine, rabbits and goats may be eviscerated in such plants without inspection for condition and wholesomeness, but uninspected and inspected operations may not be carried on simultaneously except in plants where processing rooms (including packing rooms) are separate or when by other acceptable means, effective segregation of inspection and uninspected product is maintained. (1957, c. 1379, s. 10.)

§ **106-549.25. Supervision of inspection program.**—The supervision of this inspection program shall be under the State Veterinarian or person designated by the Commissioner or under the State Veterinarian or the person designated by the Commissioner in cooperation with the supervisor of the inspection program of the United States Department of Agriculture in the event a cooperative arrangement is carried on between the North Carolina Department of Agriculture and the United States Department of Agriculture. (1957, c. 1379, s. 11.)

§ **106-549.26. Who shall inspect meat and meat products.** — The State Veterinarian or person designated by the Commissioner shall have the authority to license, designate, or otherwise determine qualified personnel who may inspect meat and meat products as provided in this article. The inspectors so designated shall have supervision over plant sanitation, inspection of meat and meat products, and carrying out the rules and regulations adopted by the Board of Agriculture. (1957, c. 1379, s. 12.)

§ **106-549.27. Withdrawal of service.** — In the event any person having official inspection service in his plant, or plants, shall fail to abide by the provisions of this article or the rules and regulations adopted by the Board of Agriculture or to terms in the agreement with the North Carolina Department of Agriculture providing for inspection service, the Commissioner shall have the right to withdraw this service. The Commissioner shall also have the authority to reinstate the service after compliances with the rules and regulations have been met. The agreement may also be terminated by the applicant by giving the Commissioner a thirty-day notice. (1957, c. 1379, s. 13.)

§ **106-549.28. Exemptions.** — The provisions of this article shall not apply to any individual raising or processing meat, meat by-products, or meat food products without the consent of such individual. (1957, c. 1379, s. 13½.)

Article 49C.

Compulsory Meat Inspection.

§ **106-549.29. Short title.**—This article shall be known and may be cited as the Compulsory Meat Inspection Act. (1961, c. 719.)

§ **106-549.29:1. Purpose generally; cost of administration.** — This article relates to the public health, safety and welfare, and provides for: The establishment of a meat inspection service, the inspection of meat and meat food products and the condemnation and destruction for food purposes of diseased, unsound or otherwise unfit meat or meat products, the prevention of misbranding and adulteration, the issuance of licenses, the adoption of regulations for the administration of the articles and penalties for violations of the article. The cost of administering the provisions of this article shall be paid for by the State out of appropriated State funds. (1961, c. 719.)

§ **106-549.30. Administered by Commissioner of Agriculture.**—This article shall be administered by the Commissioner of Agriculture of the State of North Carolina, hereinafter referred to as the "Commissioner." (1961, c. 719.)

§ **106-549.31. Definitions.**—The following words, terms and phrases shall be construed for the purpose of this article as follows:

(1) "Assistant State Supervisor" means a qualified, licensed veterinarian employed by the North Carolina Department of Agriculture to assist the State Supervisor.

(2) "Commissioner" means Commissioner of Agriculture of North Carolina.

(3) "Identity" means to apply official identification on the carcasses, primal parts, packages or containers thereof, with the inspection symbol "North Carolina Inspected and Passed" or approved abbreviation thereof. The inspection symbol shall further identify each official plant by a designated number.

(4) "Inter-county" means across county boundary lines.

(5) "Intra-county" means confined to one county; not crossing county lines.

(6) "Meat" means the edible part of the muscle of cattle, sheep, swine, goats, or rabbits which is skeletal or which is found in the tongue, in a diaphragm, in the heart or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue, and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears.

(7) "Meat by-product" means any edible part other than meat which has been derived from one or more cattle, sheep, swine, goats or rabbits.

(8) "Meat food product" means any article of food, or any article intended for or capable of being used as food for human consumption which is derived or prepared, in whole or in substantial and definite part, from any permitted portion of any cattle, sheep, swine, goat or rabbit, except such articles as organic-therapeutic substance, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession; provided, that the Commissioner shall have the authority to prescribe a definition and identity for any food or class of food in which optional ingredients are permitted.

(9) "Meat inspector" means a qualified person employed by the North Carolina Department of Agriculture, approved and designated for the purposes of inspecting meat, meat products, and meat by-products under the supervision of a veterinary inspector in an official plant.

(10) "Official identification" means a symbol such as a stamp, label, seal, or

other device approved by the Commissioner, affixed to any carcasses, parts of carcasses, meat, meat by-products and meat food products that have been inspected and passed for wholesomeness.

(11) "Official plant" means a single plant comprised of one or more buildings or parts thereof, including equipment, premises, facilities and methods of operation which have been inspected and approved by the State Supervisor or his authorized representative as suitable and adequate for slaughtering animals, processing meat, meat products, and meat by-products, in accordance with this article and the rules and regulations promulgated thereunder.

(12) "Person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not, and every officer or authorized representative thereof.

(13) "Producer" means a person, firm or corporation growing livestock for human consumption, on his farm or farms controlled by him.

(14) "Qualified veterinarian" means a graduate of a school of veterinary medicine approved by the American Veterinary Medical Association or the United States Department of Agriculture.

(15) "Retailer" means any person, firm or corporation selling or offering for sale meat, meat products, or meat by-products on its own premises to the consumer.

(16) "Slaughtering establishment" means any person, firm or corporation slaughtering cattle, sheep, swine, goats or rabbits or processing meat, meat products, and meat by-products for sale for human consumption, or any person, firm or corporation operating a slaughterhouse or any meat packer, or any nonexempt producer, or any two or more such persons, firms or corporations acting in combination.

(17) "State Supervisor" means a qualified, licensed veterinarian employed by the North Carolina Department of Agriculture and appointed by the Commissioner.

(18) "Veterinary inspector" means a qualified veterinarian approved and designated by the State Supervisor employed by the North Carolina Department of Agriculture to inspect and supervise the inspection of meat, meat products, and meat by-products in an official plant. (1961, c. 719.)

§ **106-549.32. Compulsory inspection; duties and powers of Commissioner.**—In order to provide consumers with a healthy and wholesome product and to properly regulate, supervise and promote the meat packing industry, it shall be the duty of the Commissioner to promote, regulate, and supervise a system of inspection of all slaughterhouses, packing houses, abattoirs, meat processors, and any other establishments processing meat and meat products in North Carolina. The Commissioner shall have supervision over all such establishments and he, or his authorized agent, is empowered and directed at all times to visit any establishment, place or premise where animals are slaughtered or prepared for food purposes. (1961, c. 719.)

§ **106-549.33. Rules and regulations.** — The Board of Agriculture shall, from time to time, provide rules and regulations necessary for the efficient execution of the provisions of this article, and all inspections and examinations made under this article shall be made in such a manner as described in the rules and regulations provided by said Board, not inconsistent with the provisions of this article; provided, however, that in promulgating such rules and regulations, said Board shall give full consideration to the rules governing meat inspection of the United States Department of Agriculture. (1961, c. 719.)

§ **106-549.34. Exemptions.**—(a) Intra-County Slaughtering Establishments.—Any slaughtering establishment whose commercial operations do not extend beyond the county boundary lines, shall be exempt from the provisions of this article; provided, however, when it appears to the Commissioner that any intra-county slaughtering establishment operations are a detriment to the public health, such an establishment may be brought within the provisions of this article.

(b) Individuals or Producers.—Any producer or individual who shall slaughter animals principally for his own domestic use or for that of his immediate family, or any individual who shall have animals slaughtered principally for himself for his own domestic use or that of his immediate family by an intra-county slaughtering establishment shall be exempt from the inter-county restrictions, and such slaughtering by an intra-county establishment shall not constitute inter-county operations within the provisions of this article.

(c) Cured Hams, Shoulders and Bacon.—The sale of country or country style cured hams, shoulders and bacon shall be exempt from the general provisions of the Compulsory Meat Inspection Law; provided, that the storing, handling and curing of such meat complies with the rules and regulations adopted by the Board of Agriculture.

(d) Federal Inspection.—Any person or firm operating and licensed under the inspection program of the United States Department of Agriculture shall be exempt from the provisions of this article.

(e) Curb Markets under Sponsorship of Home Demonstration Clubs.—Curb markets operated under the sponsorship of Home Demonstration Clubs are exempt from the provisions of this article. (1961, c. 719.)

§ **106-549.35. Office of State Supervisor created; qualifications and duties; Assistant State Supervisor; veterinary inspectors and meat inspectors.** — There is created the office of State Supervisor. The Commissioner of Agriculture shall appoint a qualified veterinarian to fill this office, who shall have had experience in meat inspection work in slaughtering establishments. The duties of the State Supervisor shall be to supervise the Compulsory Meat Inspection Program, enforce and efficiently carry out the provisions of this article and the rules and regulations of the Board of Agriculture so as to assure the public that only pure and wholesome meats are offered for sale. The Commissioner may appoint an Assistant State Supervisor, veterinary inspectors and meat inspectors who shall be responsible to the State Supervisor and who shall conduct antemortem and postmortem inspections, enforce sanitary requirements, perform other duties necessary to conduct proper meat inspection and carry out the provisions of this article and the rules and regulations adopted thereunder. The salaries of the above-named personnel shall be fixed in accordance with the State Personnel Act. (1961, c. 719.)

§ **106-549.36. Application for inspection; examination of establishment; assignment and use of official plant numbers.**—Effective July 1, 1962, before a person shall engage in slaughtering meat food animals or manufacturing or processing meat food products, or by-products on an inter-county basis in this State, he shall first apply to the Commissioner for the inauguration of inspection service in the establishment where such meat or meat food animals are to be slaughtered or meat food products processed or manufactured. Such application shall be in writing, addressed to the Department of Agriculture, on blank forms which shall be furnished by said Department of Agriculture. In such application for inspection the applicant shall agree to comply with the provisions of this article, and the rules and regulations adopted hereunder and to maintain said establishment in a clean and sanitary manner. Upon receipt of said application, the Commissioner or his authorized agent shall cause to be made an inspection of said establishment, and if found clean and sanitary, and if properly constructed, maintained and equipped to conduct its business in accordance with this article, and the rules and regulations adopted hereunder, the Commissioner or his authorized agent shall inaugurate inspection services therein and shall give to such establishment an official number, to be used to mark meat in this establishment, as provided in this article.

Such establishment shall thereafter be known as "Official Plant No. ....," and it shall be illegal for any other plant to use the official number of the said plant.

On November 1, 1961, any person qualifying for meat inspection services may make application to the Commissioner, and said service shall be inaugurated as soon as practicable. (1961, c. 719.)

§ **106-549.37. Suspension or revocation of State meat inspection.**—If any condition exists in any establishment which may affect adversely the wholesomeness of meat products prepared or processed at such establishments, the Commissioner may immediately suspend State meat inspection until the condition is remedied. The Commissioner may revoke State meat inspection from any establishment on ten days' notice to the operator thereof, if such operator, after having received written notice of such noncompliance, repeatedly and persistently fails to comply with the rules and regulations promulgated by the Commissioner or any provisions of this article. (1961, c. 719.)

§ **106-549.38. Procedure for revocation, suspension or denial of license; hearings; appeals.**—In all proceedings for revocation, suspension or denial of a license, the licensee or applicant shall be given an opportunity to be heard and may be represented by counsel. The Commissioner shall give the licensee twenty days' notice in writing and such notice shall specify the charges or reasons for revocation, suspension or denial. The notice shall also state the date, time and place where such hearing is to be held. Such hearing shall be held at the Department of Agriculture, Raleigh, N.C., unless a different location be agreed upon.

The Commissioner may issue subpoenas to compel the attendance of witnesses, and/or the production of books, papers, records, and/or documents anywhere in the State. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath, which may be administered by the Commissioner. Testimony shall be taken in person or by deposition under such rules and regulations as the Board of Agriculture may prescribe. The Commissioner shall hear and determine the charges, make findings and conclusions upon the evidence produced, and file them in his office, and serve upon the accused a copy of such findings and conclusions.

The revocation or suspension of a license shall be in writing signed by the Commissioner or the Assistant Commissioner, stating the grounds upon which such order is based, and the aggrieved person shall have the right to appeal from such an order within twenty days after a copy thereof is served upon him to the superior court of the county in which the appellant's establishment is located, or to the Superior Court of Wake County. Trial on such appeal shall be de novo; provided, however, that if the parties so agree, it may be confined to a review of the record made at the hearing by the Commissioner.

An appeal shall lie to the Supreme Court from the judgment of the superior court, as provided in all other civil cases. (1961, c. 719.)

§ **106-549.39. Plant construction and equipment.** — For the purpose of inspection and qualifying slaughterhouses, packing houses, abattoirs, meat processing plants and any other establishments manufacturing meat food, meat food by-products and meat products for licenses, the Board of Agriculture shall have authority to adopt the necessary sanitary and meat inspection rules and regulations, pertaining to the construction, equipment and facilities of slaughterhouses, packing houses, abattoirs, meat processing plants, and any other establishments handling meat food or meat food by-products. Said rules and regulations shall, so far as practical be in conformity with the meat inspection division, agricultural research service, United States Department of Agriculture meat inspection rules and regulations. (1961, c. 719.)

§ **106-549.40. Antemortem inspection.** — The Commissioner, or his authorized agents, shall require and provide for an antemortem examination and inspection by inspectors of all meat food animals before they are allowed to enter any state-inspected establishment in which such meat food animals are to be slaughtered and the meat thereof is to be sold and used within the State. Such antemortem inspection shall be made on the day of slaughter. All meat food animals which on such antemortem inspection are found to show symptoms of disease or in abnormal condition shall be set apart and final disposition of such animals shall be made by the veterinary inspector. The veterinary inspector shall dispose of such animals in conformity with the rules and regulations of the State Board of Agriculture whether such animals are released for slaughter, held as suspects or condemned. (1961, c. 719.)

§ **106-549.41. Postmortem inspection.** — The Commissioner, or his authorized agent, shall require and provide postmortem inspection of all animals slaughtered for food purposes on the day of the slaughter in any and all establishments in the State of North Carolina. The head, tongue, tail, thymus glands, viscera, and other parts and blood used in the preparation of meat food, meat food products or by-products, or medicinal products, shall be inspected at the time of evisceration and retained in such a manner as to preserve their identity until after the postmortem examination has been completed. All carcasses and parts thereof showing signs of disease shall have final inspection by the veterinary inspector and disposed of in conformity with the rules and regulations adopted by the Board of Agriculture. (1961, c. 719.)

§ **106-549.42. Designation of times of inspection.** — Whenever the Commissioner, or his authorized agents, shall deem it necessary in order to furnish proper, efficient, and economical inspection of establishments and the proper inspection of meat food animals or meat, the Commissioner or his authorized agent may designate days and hours for the slaughter of meat food animals and the preparation of processing of meat at such establishments. The Commissioner or his agent, in making such designation of days and hours, shall give consideration to the recommendations of the various establishments throughout the State and the existing practices and methods used at said establishments, fixing the time for slaughter of meat food animals and the preparation or processing of meat thereof. (1961, c. 719.)

§ **106-549.43. Fee required for inspections outside regular working hours; disposition of fees.**—The Commissioner, or his agents, shall not be required to furnish meat inspection, as herein provided, for more than eight hours in any one day, or in excess of forty hours in any one calendar week, or on Sundays or legal holidays except on payment to the Department by the operator of an establishment under inspection of an hourly fee for each hour of State meat inspection furnished over eight hours in any one day or in excess of forty hours in any calendar week or on Sundays and legal holidays. The Commissioner shall establish an hourly rate for such overtime at an amount sufficient to defray the cost of such inspection.

All fees received by the Department under this section shall be deposited in the general fund in the State treasury, credited to the Department of Agriculture account, and continuously appropriated to the Department for the purpose of administration and enforcement of this article. (1961, c. 719.)

§ **106-549.44. Labeling and marking.** — The Commissioner shall provide meat inspection stamps and assign establishment numbers to all slaughtering establishments, packing houses, abattoirs, meat processing plants, and any other establishments handling meat, meat by-products, or meat food by-products, which have been approved and granted State meat inspection service by the Commissioner, and the stamps shall contain the words "North Carolina Inspected and Passed," or words of similar import. The carcasses of all livestock slaughtered, together with the usual wholesale cuts thereof, and such meat and/or meat products in loose form, encased, packaged, or canned as may be designated by the Commissioner, shall be legibly marked or branded with an edible ink, or otherwise identified with the assigned stamp and identification number of the slaughterhouse, packing house, abattoir, meat processing plant, or other establishment handling meat, meat products, and meat food by-products, all in accordance with the rules and regulations adopted by the Commissioner. Such inspection legend shall be applied under the supervision of meat inspection personnel.

The inspection stamp shall be designed by the Board of Agriculture so as not to be in conflict with inspection stamps of the United States Department of Agriculture. (1961, c. 719.)

§ **106-549.45. Transportation of uninspected meat, etc.; transportation, sale, etc., of inspected meat; condemnation of products found unwholesome following removal from plant of origin.**—No person shall transport inter-county, for the purpose of sale, any meat, meat by-product, or meat food product which is not properly labelled or marked as "N.C. Inspected and Passed" or "U.S. Inspected and Passed." Carcasses, parts of carcasses, meat, meat by-products, and meat food products, inspected and passed for wholesomeness by the North Carolina Department of Agriculture, may be transported, stored and sold at any place within the State of North Carolina, including any political subdivision thereof; provided, however, such products following removal from the plant of origin found to be unwholesome and unfit for human food during transportation, storage, or at any subsequent time, may be condemned as unwholesome and unfit for human food and disposed of as inedible products in accordance with the rules and regulations adopted by the Board of Agriculture. (1961, c. 719.)

§ **106-549.46. Reinspection; products containing muscle tissue of pork; use of dye, chemical preservatives, etc.** — All meat, meat products or by-products in channels of trade, whether fresh, frozen, cured or otherwise prepared, even though previously inspected and passed, shall be subject to reinspection under this article and the rules and regulations as often as may be necessary in order to ascertain whether such food is sound, healthful, wholesome, and fit for human food. No meat product of any kind containing muscle tissue of pork, which is customarily eaten without cooking, shall be prepared for human consumption unless subjected to a temperature sufficient to destroy all live trichinae. No food shall contain any dye, chemical preservative or other substance which impairs its wholesomeness or which is not approved by the Commissioner or his authorized agent. (1961, c. 719.)

§ **106-549.47. Effect of article.**—The provisions of this article shall be applied in such a manner as to maintain the support and cooperation of all State and local agencies dealing with animals, animal diseases and human diseases, and in no way shall this article restrict the authority given to the State Board of Health or any other agency under the General Statutes of North Carolina. (1961, c. 719.)

§ **106-549.48. Penalties.**—Any person who shall violate any of the provisions of this article, or the rules and regulations adopted hereunder, shall be guilty of a misdemeanor and may be fined or imprisoned or both, in the discretion of the court. (1961, c. 719.)

ARTICLE 49D.

Compulsory Poultry Inspection.

§ 106-549.49. Short title.—This article shall be known, and may be cited as the Compulsory Poultry Inspection Act. (1961, c. 875.)

§ 106-549.50. Purpose generally; cost of administration. — This article relates to the public health, safety, and welfare and provides for: The establishment of a poultry inspection service, the inspection of poultry and poultry products and the condemnation and destruction for food purposes of diseased, unsound, or otherwise unfit poultry or poultry products, the prevention of misbranding and alteration, the issuance of licenses, the adoption of regulations for the administration of the article, and penalties for violation of the article. The cost of administering the provisions of this article shall be paid for by the State out of appropriated State funds. (1961, c. 875.)

§ 106-549.51. Administered by Commissioner of Agriculture. — This article shall be administered by the Commissioner of Agriculture of the State of North Carolina hereinafter referred to as "Commissioner." (1961, c. 875.)

§ 106-549.52. Definitions. — The following words, terms, and phrases shall be construed for the purpose of this article as follows:

(1) "Board" means the North Carolina Board of Agriculture.

(2) "Commissioner" means Commissioner of Agriculture of North Carolina.

(3) "Inspector" means any person who is licensed to inspect and certify the condition and wholesomeness of poultry and poultry products in accordance with the provisions of this article or the rules and regulations promulgated hereunder.

(4) "Official plant" means one or more buildings or parts thereof comprising a single plant with the facilities and methods of operation therein having been approved by the Commissioner as suitable and adequate for processing poultry in accordance with the rules and regulations of the Board.

(5) "Person" means any individual, partnership, association, business trust, corporation or any organized group of persons, whether incorporated or not.

(6) "Poultry" means any kind of domesticated bird, including, but not limited to, chickens, turkeys, ducks, pigeons, geese and guineas.

(7) "Poultry products" means any giblets or edible part of dressed poultry other than eviscerated poultry or any article of food for human consumption which is prepared in part from any edible portion of dressed poultry or from any product derived wholly from such edible portion.

(8) "Ready-to-cook poultry" means any dressed poultry from which the protruding pin feathers, vestigial feathers, (hair or down, as the case may be), head, shank, crop, oil glands, trachea, esophagus, entrails, reproductive organs, and lungs have been removed, and, with or without the giblets, is ready to cook without need of further processing. Ready-to-cook poultry also means any cut up or disjointed portion of poultry. (1961, c. 875.)

§ 106-549.53. Compulsory inspections; duties and powers of Commissioner.—In order to provide consumers with a healthy and wholesome product and to properly regulate, supervise, and promote the poultry processing industry, it shall be the duty of the Commissioner to promote, regulate and supervise a system of inspection of all poultry processing establishments, poultry slaughtering houses, and any other establishments which may slaughter, process or dress poultry or poultry products in North Carolina. The Commissioner shall have supervision over all such establishments, and he or his authorized agent is empowered and directed at all times to visit any establishment, place or premises where poultry is slaughtered, processed or dressed for food purposes. (1961, c. 875.)

§ **106-549.54. Rules and regulations.**—The Board of Agriculture shall, from time to time, provide rules and regulations necessary for the efficient execution of the provisions of this article, and all inspections and examinations made under this article shall be made in such a manner as described in the rules and regulations provided by said Board, not inconsistent with the provisions of this article; provided, however, that in promulgating such rules and regulations, said Board shall give full consideration to the rules governing poultry inspection of the United States Department of Agriculture. (1961, c. 875.)

§ **106-549.55. Exemptions.** — (a) Intra-County Slaughtering Establishments.—Any poultry slaughtering or processing establishment, whose commercial operations do not extend beyond the county boundary lines, shall be exempt from the provisions of this article; provided, however, when it appears to the Commissioner that any intra-county poultry slaughtering or dressing establishment operations are being handled or carried out in such volume as to affect, burden, or obstruct the movement of inspected poultry products in inter-county trade, or when it appears that such intra-county establishment is a detriment to the public health, such establishment may be brought within the provisions of this article.

(b) Individuals or Producers.—Any producer or individual who shall slaughter, process or dress poultry, principally for his own domestic use or for that of his immediate family, or any individual who shall have poultry slaughtered or dressed principally for himself for his own domestic use or for that of his immediate family by an intra-county poultry processing establishment, shall be exempt from the inter-county restrictions, and such slaughtering by an intra-county establishment shall not constitute inter-county operations within the provisions of this article.

(c) Federal Inspection.—Any person or firm operating and licensed under the inspection program of the United States Department of Agriculture shall be exempt from the provisions of this article.

(d) Curb Markets under Supervision of Home Demonstration Clubs.—Curb markets operated under the sponsorship of Home Demonstration Clubs are exempt from the provisions of this article. (1961, c. 875.)

§ **106-549.56. Office of State Supervisor created; qualifications and duties; Assistant State Supervisor; veterinary inspectors and poultry inspectors.** — There is created the office of State Supervisor. The Commissioner of Agriculture shall appoint a qualified veterinarian to fill this office, who shall have had experience in poultry inspection work in slaughtering establishments. The duties of the State Supervisor shall be to supervise the Compulsory Poultry Inspection Program, enforce and efficiently carry out the provisions of this article and the rules and regulations of the Board so as to assure the public that only pure and wholesome poultry is offered for sale. The Commissioner may appoint an Assistant State Supervisor, veterinary inspectors and poultry inspectors who shall be responsible to the State Supervisor and who shall conduct antemortem and postmortem inspections, enforce sanitary requirements, perform other duties necessary to conduct proper poultry inspection and carry out the provisions of this article and the rules and regulations adopted hereunder. The salaries of the above-named personnel shall be fixed in accordance with the State Personnel Act. (1961, c. 875.)

§ 106-549.57. Application for inspection; examination of establishments; assignment and use of official plant numbers.—Effective on the first day of July, 1962, before a person shall engage in slaughtering, processing, or dressing poultry or poultry products on an inter-county basis in this State, he shall first apply to the Commissioner for the inauguration of inspection service in the establishment where such poultry or poultry products are to be slaughtered, processed or dressed. Such application shall be in writing, addressed to the Department of Agriculture on blank forms which shall be furnished by said Department of Agriculture. In such application for inspection, the applicant shall agree to comply with the provisions of this article and the rules and regulations adopted hereunder, and to maintain said establishment in a clean and sanitary manner. Upon receipt of said application, the Commissioner or his authorized agent shall cause to be made an inspection of said establishment and if found clean and sanitary and if properly constructed, maintained and equipped to conduct its business in accordance with this article and the rules and regulations adopted hereunder, the Commissioner or his authorized agent shall inaugurate inspection services therein and shall give to such an establishment an official number, to be used to mark or tag poultry and poultry products in this establishment, as provided in this article.

Such establishment shall thereafter be known as "Official Plant No. ....," and it shall be illegal for any other plant to use the official number of the said plant.

On and after January 1, 1962, any person qualifying for poultry inspection services may make application to the Commissioner and said service shall be inaugurated as soon as is reasonably possible. (1961, c. 875.)

§ 106-549.58. Suspension or revocation of State poultry inspection.—If any condition exists in any establishment which may affect adversely the wholesomeness of poultry or poultry products prepared or processed at such establishments, the Commissioner may immediately suspend State poultry inspection until the condition is remedied. The Commissioner may revoke State poultry inspection from any establishment on twenty days' notice to the operator thereof, if such operator, after having received written notice of such noncompliance, repeatedly and persistently fails to comply with the rules and regulations promulgated by the Board or any provisions of this article. (1961, c. 875.)

§ 106-549.59. Procedure for revocation, suspension or denial of license; hearings; appeals. — In all proceedings for revocation, suspension or denial of the license, the licensee or applicant shall be given an opportunity to be heard and may be represented by counsel. The Commissioner shall give the licensee twenty days' notice in writing and such notice shall specify the charges or reasons for revocation, suspension or denial. The notice shall also state the date, time and place where such hearing is to be held. Such hearing shall be held at the Department of Agriculture, Raleigh, N.C., unless a different location be agreed upon.

The Commissioner may issue subpoenas to compel the attendance of witnesses, and/or the production of books, papers, records, and/or documents anywhere in the State. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath, which may be administered by the Commissioner. Testimony shall be taken in person or by deposition under such rules and regulations as the Commissioner may prescribe. The Commissioner shall hear and determine the charges, make findings and conclusions upon the evidence produced, and file them in his office, and serve upon the accused a copy of such findings and conclusions.

The revocation or suspension of a license shall be in writing signed by the Commissioner, stating the grounds upon which such order is based, and the aggrieved person shall have the right to appeal from such an order within twenty days after a copy thereof is served upon him to the superior court of the county in which the appellant's establishment is located or to the Superior Court of Wake County. Trial on such appeal shall be de novo; provided, however, that if the parties so agree, it may be confined to a review of the record made at the hearing by the Commissioner.

An appeal shall lie to the Supreme Court from the judgment of the superior court, as provided in all other civil cases. (1961, c. 875.)

§ **106-549.60. Plant construction and equipment.** — For the purpose of inspection and qualifying poultry slaughterhouses, poultry processing plants, and any other establishment processing or dressing poultry, or poultry products for licenses, the Board shall have authority to adopt the necessary sanitary and poultry inspection rules and regulations pertaining to the construction, equipment, and facilities of poultry slaughterhouses, poultry processing plants, and any other establishment dressing or handling poultry or poultry products. Said rules and regulations shall, so far as practical, be in conformity with the Poultry Inspection Division, Agricultural Marketing Service, United States Department of Agriculture Poultry Inspection Rules and Regulations. (1961, c. 875.)

§ **106-549.61. Antemortem inspection.** — The Commissioner, or his authorized agent, shall require and provide for an antemortem examination and inspection by inspectors of all poultry before it is allowed in any State-inspected establishment in which such poultry is to be slaughtered, and the meat thereof is to be sold and used within the State. Such antemortem inspection shall be made on the day of slaughter. All poultry, which on such antemortem inspection is found to show symptoms of disease, or in abnormal condition, shall be set apart and final disposition of such poultry shall be made by the State Supervisor or his agent. The State Supervisor or his agent shall dispose of such poultry in conformity with the rules and regulations of the Board whether such poultry is released for slaughter, held as suspected of disease, or condemned. (1961, c. 875.)

§ **106-549.62. Postmortem inspection.** — The Commissioner, or his authorized agent, shall require and provide postmortem inspection of all poultry slaughtered for food purposes on the day of the slaughter in every establishment having poultry inspection in the State. The head, viscera, and other parts and blood used in the preparation of food or food products shall be inspected at the time of the evisceration and retained in such a manner as to preserve their identity until after the postmortem examination has been completed. All carcasses and parts thereof showing signs of disease shall have final inspection by the State Supervisor or his agent and disposed of in conformity with the rules and regulations adopted by the Board. (1961, c. 875.)

§ **106-549.63. Designation of times of inspection.** — Whenever the Commissioner, or his authorized agent, shall deem it necessary in order to furnish proper, efficient and economical inspection of establishments and the proper inspection of poultry, the Commissioner, or his authorized agent, may designate days and hours for the slaughter of poultry and the preparation, processing, or dressing of poultry at such establishments. The Commissioner, or his agent, in making such designation of days and hours, shall give consideration to the recommendations of the various establishments throughout the State, and the existing practices and methods used at said establishments, fixing the time for slaughter of poultry and the preparation, processing, or dressing of poultry thereof. (1961, c. 875.)

§ **106-549.64. Fee required for inspections outside the regular working hours; disposition of fees.**—The Commissioner, or his authorized agent, shall not be required to furnish poultry inspection, as herein provided, for more than ten hours in any one day, or in excess of forty hours in any one calendar week, or on Sundays or legal holidays, except on payment to the Department by the operator of an establishment under inspection of an hourly fee for each hour of State poultry inspection furnished over ten hours in any one day or in excess of forty hours in any calendar week or on Sundays and legal holidays. The Commissioner shall establish an hourly rate for such overtime at an amount sufficient to defray the cost of such inspection.

All fees received by the Department under this inspection shall be deposited in the general fund in the State treasury, credited to the Department of Agriculture account, and continuously appropriated to said Department for the purpose of administration and enforcement of this article. (1961, c. 875.)

§ **106-549.65. Labelling and marking.** — The Commissioner shall design inspection stamps or tags or paper giblet wrappings and assign establishment numbers to all poultry slaughtering establishments, poultry processing and dressing plants, and any other establishments handling poultry or poultry products, which have been approved and granted State poultry inspection service by the Commissioner, and the stamps or tags or paper giblet wrappings shall contain the words "North Carolina Inspected and Passed," or words of similar import. The carcasses of all poultry slaughtered, together with the usual cuts thereof, and such poultry or products in loose form, encased, packaged, or canned, as may be designated by the Commissioner, shall be legibly marked or branded with an edible ink, or otherwise identified with the assigned stamp or tag or paper giblet wrapping and identification number of the slaughterhouse or processing and dressing plant or other establishment handling poultry, poultry products, all in accordance with the rules and regulations adopted by the Board. Such inspection legend shall be applied under the supervision of poultry inspection personnel.

The inspection stamp or tag or paper giblet wrapping shall be designed so as not to be in conflict with inspection stamps of the United States Department of Agriculture. (1961, c. 875; 1963, c. 1029.)

Editor's Note.—The 1963 amendment inserted the words "or paper giblet wrappings" at two places in this section. It also inserted the singular of the quoted expression at two places.

§ **106-549.66. Transportation of uninspected poultry, etc.; transportation, sale, etc., of inspected poultry; condemnation of products found unwholesome following removal from plant of origin.**—No person shall transport inter-county, for the purpose of sale, any poultry, or poultry product, which is not properly labelled or marked as "North Carolina Inspected and Passed," or "U.S. Inspected and Passed." Carcasses, parts of carcasses, and poultry products inspected and passed for wholesomeness by the North Carolina Department of Agriculture, may be transported, stored and sold at any place within the State of North Carolina, including any political subdivision thereof; provided, however, such products following removal from the plant of origin found to be unwholesome and unfit for human food during transportation, storage or at any subsequent time may be condemned as unwholesome and unfit for human food and disposed of as inedible products in accordance with the rules and regulations adopted by the Board. (1961, c. 875.)

§ **106-549.67. Reinspection; use of dye, chemical preservatives, etc.** — All poultry and poultry products in channels of trade, whether fresh, frozen, or otherwise prepared, even though previously inspected and passed, shall be subject to reinspection under this article, and the rules and regulations adopted by the Board as often as may be necessary in order to ascertain whether such food is sound, healthful, wholesome, and fit for human food. No food shall contain any dye, chemical or preservative or other substance which impairs its wholesomeness or which is not approved by the Commissioner or his authorized agent. (1961, c. 875.)

§ **106-549.68. Effect of article.**—The provisions of this article shall be applied in such a manner as to maintain the support and cooperation of all State and local agencies dealing with poultry, poultry diseases, and human diseases, and in no way shall this article restrict the authority given to the State Board of Health or any other agency under the General Statutes of North Carolina. (1961, c. 875.)

§ **106-549.69. Penalties.**—Any person who shall violate any of the provisions of this article or the rules and regulations adopted hereunder shall be guilty of a misdemeanor and may be fined or imprisoned, or both, in the discretion of the court. (1961, c. 875.)

ARTICLE 49E.

Disposal of Dead Diseased Poultry at Commercial Farms.

§ **106-549.70. Disposal pit or incinerator.** — Every person, firm or corporation engaged in growing poultry, turkeys or other domestic fowl or products thereof for commercial purposes shall provide and maintain a disposal pit or incinerator of a size and design, approved by the Department of Agriculture, wherein all dead diseased poultry carcasses shall be disposed of in a manner to prevent the spread of disease; provided, that the provisions of this article shall not apply to growers of poultry, turkeys or other domestic fowl with flocks of two hundred (200) or less. (1961, c. 1197, s. 1.)

§ **106-549.71. Penalty for violation.**—Any person, firm or corporation violating the provisions of this article shall, upon conviction, be fined or imprisoned in the discretion of the court. (1961, c. 1197, s. 2.)

ARTICLE 50.

Promotion of Use and Sale of Agricultural Products.

§ **106-550. Policy as to promotion of use of, and markets for, farm products; tobacco excluded.**—It is declared to be in the interest of the public welfare that the North Carolina farmers who are producers of livestock, poultry, field crops and other agricultural products, including cattle, swine, sheep, broilers, turkeys, commercial eggs, peanuts, cotton, potatoes, peaches, apples, berries, vegetables and other fruits of all kinds, as well as bulbs and flowers and other agricultural products having a domestic or foreign market, shall be permitted and encouraged to act jointly and in cooperation with growers, handlers, dealers and processors of such products in promoting and stimulating, by advertising and other methods, the increased production, use and sale, domestic and foreign, of any and all of such agricultural commodities. The provisions of this article, however, shall not include the agricultural product of tobacco, with respect to which a separate provision and enactment has heretofore been made. (1947, c. 1018, s. 1; 1951, c. 1172, s. 1; 1957, cc. 260, 1352.)

Editor's Note.—For comment on article, suggesting its invalidity as an unlawful delegation of governmental power, see 25 N.C.L. Rev. 396.

§ **106-551. Federal Agricultural Marketing Act.**—The passage by the Seventy-Ninth Congress of a law designated as Public Law 733, and more particularly Title II of that act, cited as "Agricultural Marketing Act of 1946," makes it all the more important for producers, handlers, processors and others of specific agricultural commodities to associate themselves in action programs, separately and with public and private agencies, to obtain the greatest and most immediate benefits under the provisions of such law, in respect to research, studies and problems of marketing, transportation and distribution. (1947, c. 1018, s. 2.)

§ **106-552. Associations, activity, etc., deemed not in restraint of trade.**—No association, meeting or activity undertaken in pursuance of the provisions of this article and intended to benefit all of the producers, handlers and processors of a particular commodity shall be deemed or considered illegal or in restraint of trade. (1947, c. 1018, s. 3.)

§ **106-553. Policy as to referenda, assessments, etc., for promoting use and sale of farm products.**—It is hereby further declared to be in the public interest and highly advantageous to the agricultural economy of the State that farmers, producers and growers commercially producing the commodities herein referred to shall be permitted by referendum to be held among the respective groups and subject to the provisions of this article, to levy upon themselves an assessment on such respective commodities or upon the acreage used in the production of the same and provide for the collection of the same, for the purpose of financing or contributing towards the financing of a program of advertising and other methods designed to increase the consumption of and the domestic as well as foreign markets for such agricultural products. Such assessments may also be used for the purpose of financing or contributing toward the financing of a program of production, use and sale of any and all such agricultural commodities. (1947, c. 1018, s. 4; 1951, c. 1172, s. 2.)

§ **106-554. Application to Board of Agriculture for authorization of referendum.**—Any existing commission, council, board or other agency fairly representative of the growers and producers of any agricultural commodity herein referred to, and any such commission, council, board or other agency hereafter created for and fairly representative of the growers or producers of any such agricultural commodity herein referred to, may at any time after the passage and ratification of this article make application to the Board of Agriculture of the State of North Carolina for certification and approval for the purpose of conducting a referendum among the growers or producers of such particular agricultural commodity, for commercial purposes, upon the question of levying an assessment under the provisions of this article, collecting and utilizing the same for the purposes stated in such referendum. (1947, c. 1018, s. 5.)

§ **106-555. Action by Board on application.**—Upon the filing with the Board of Agriculture of such application on the part of any commission, council, board or other agency, the said Board of Agriculture shall within thirty days thereafter meet and consider such application; and if upon such consideration the said Board of Agriculture shall find that the commission, council, board or other agency making such application is fairly representative of and has been duly chosen and delegated as representative of the growers producing such commodity, and shall otherwise find and determine that such application is in conformity with the provisions of this article and the purposes herein stated, then and in such an event it shall be the duty of the Board of Agriculture to certify such commission, council, board or other agency as the duly delegated and authorized group or agency representative of the commercial growers and producers of such agricultural commodity, and shall likewise certify that such agency is duly authorized to conduct among the growers and producers of such commodity a referendum for the purposes herein stated. (1947, c. 1018, s. 6.)

§ **106-556. Conduct of referendum among growers and producers on question of assessments.**—Upon being so certified by the said Board of Agriculture in the manner hereinbefore set forth, such commission, council, board or other agency shall thereupon be fully authorized and empowered to hold and conduct on the part of the producers and growers of such particular agricultural commodity a referendum on the question of whether or not such growers and producers shall levy upon themselves an assessment under and subject to and for the purposes stated in this article. Such referendum may be conducted either on a state-wide or area basis. (1947, c. 1018, s. 7.)

§ **106-557. Notice of referendum; statement of amount, basis and purpose of assessment; maximum assessment.**—With respect to any referendum conducted under the provisions of this article, the duly certified commission, council, board or other agency shall, before calling and announcing such referendum, fix, determine and publicly announce at least sixty days before the date determined upon for such referendum, the date, hours and polling places for voting in such referendum, the amount and basis of the assessment proposed to be collected, the means by which such assessment shall be collected if authorized by the growers, and the general purposes to which said amount so collected shall be applied; no annual assessment levied under the provisions of this article shall exceed one half of one percent of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted. (1947, c. 1018, s. 8.)

§ **106-558. Management of referendum; expenses.** — The arrangements for and management of any referendum conducted under the provisions of this article shall be under the direction of the commission, council, board or other agency duly certified and authorized to conduct the same, and any and all expenses in connection therewith shall be borne by such commission, council, board or agency. (1947, c. 1018, s. 9.)

§ **106-559. Basis of referendum; eligibility for participation; question submitted.**—Any referendum conducted under the provisions of this article may be held either on an area or state-wide basis, as may be determined by the certified agency before such referendum is called; and such referendum, either on an area or state-wide basis, may be participated in by all farmers engaged in the production of such agricultural commodity on a commercial basis, including owners of farms on which such commodity is produced, tenants and sharecroppers. In such referendum, such individuals so eligible for participation shall vote upon the question of whether or not there shall be levied an annual assessment for a period of three years in the amount set forth in the call for such referendum on the agricultural product covered by such referendum. (1947, c. 1018, s. 10.)

§ **106-560. Effect of more than one-third vote against assessment.** —If in such referendum with respect to any agricultural commodity herein referred to more than one third of the farmers and producers in the area in which such referendum is conducted, eligible to participate and voting therein shall vote in the negative and against the levying or collection of such assessment, then in such an event no assessment shall be levied or collected. (1947, c. 1018, s. 11.)

§ **106-561. Effect of two-thirds vote for assessment.** — If in such referendum called under the provisions of this article two thirds or more of the farmers or producers in the area in which such referendum is conducted, eligible to participate and voting therein shall vote in the affirmative and in favor of the levying and collection of such assessment proposed in such referendum on the agricultural commodity covered thereby, then such assessment shall be collected in the manner determined and announced by the agency conducting such referendum. (1947, c. 1018, s. 12.)

§ **106-562. Regulations as to referendum; notice to farm organizations and county agents.**—The hours, voting places, rules and regulations and the area within which such referendum herein authorized with respect to any of the agricultural commodities herein referred to shall be established and determined by the agency of the commercial growers and producers of such agricultural commodity duly certified by the Board of Agriculture as hereinbefore provided; the said referendum date, area, hours, voting places, rules and regulations with respect to the holding of such referendum shall be published by such agency conducting the same through the medium of the public press in the State of North Carolina at least sixty days before the holding of such referendum, and direct written notice thereof shall likewise be given to all farm organizations within the State of North Carolina and to each county agent in any county in which such agricultural product is grown. Such notice shall likewise contain a statement of the amount of annual assessment proposed to be levied—which assessment in any event shall not exceed one half of one percent of the value of the year's production of such agricultural commodity grown by any farmer, producer or grower included in the group to which such referendum is submitted—and shall likewise state the method by which such assessment shall be collected and how the proceeds thereof shall be administered and the purposes to which the same shall be applied, which purposes shall be in keeping with the provisions of this article. (1947, c. 1018, s. 13.)

§ 106-563. Distribution of ballots; arrangements for holding referendum; declaration of results.—The duly certified agency of the producers of any agricultural product among whom a referendum shall be conducted under the provisions of this article shall likewise prepare and distribute in advance of such referendum all necessary ballots for the purposes thereof, and shall, under rules and regulations promulgated by said agency, arrange for the necessary poll holders for conducting the said referendum; and following such referendum and within ten days thereafter the said agency shall canvass and publicly declare the result of such referendum. (1947, c. 1018, s. 14.)

§ 106-564. Collection of assessments; custody and use of funds.—In the event two thirds or more of the farmers eligible for participation in such referendum and voting therein shall vote in favor of such assessment, then the said assessment shall be collected annually for the number of years set forth in the call for such referendum, and the collection of such assessment shall be under such method, rules and regulations as may be determined by the agency conducting the same; and the said assessment so collected shall be paid into the treasury of the agency conducting such referendum, to be used together with other funds from other sources, including donations from individuals, concerns or corporations, and grants from State or governmental agencies, for the purpose of promoting and stimulating, by advertising and other methods, the increased use and sale, domestic and foreign, of the agricultural commodity covered by such referendum. Such assessments may also be used for the purpose of financing or contributing toward the financing of a program of production, use and sale of any and all such agricultural commodities. (1947, c. 1018, s. 15; 1951, c. 1172, s. 3; 1965, c. 1046, s. 1.)

Editor's Note. — The 1965 amendment substituted "number of years" for "three years" near the beginning of the first sentence.

§ 106-564.1. Alternate method for collection of assessments. — As an alternate method for the collection of assessments provided for in G.S. 106-564, and upon the request of the duly certified agency of the producers of any agricultural products referred to in G.S. 106-550, the Commissioner of Agriculture shall notify, by registered letter, all persons, firms and corporations engaged in the business of purchasing any such agricultural products in this State, that on and after the date specified in the letter the assessments shall be deducted by the purchaser, or his agent or representative, from the purchase price of any such agricultural products. The assessment so deducted, shall, on or before the 1st day of June of each year following such deduction, be remitted by such purchaser to the Commissioner of Agriculture of North Carolina who shall thereupon pay the amount of the assessments to the duly certified agency of the producers entitled thereto. The books and records of all such purchasers of agricultural products shall at all times during regular business hours be open for inspection by the Commissioner of Agriculture or his duly authorized agents. (1953, c. 917.)

§ **106-564.2. Further alternative method for collection of assessments.**—As an alternate method for the collection of assessments provided for in G.S. 106-564, the duly certified agency representing the producers of peaches, apples or other tree fruits, is hereby authorized to establish the names, addresses and number of trees or acres of trees and certify same to the Commissioner of Agriculture. The Commissioner of Agriculture shall then notify by registered letter such certified producers that on or before the date specified by the duly certified agency, the assessments shall be paid to the Commissioner of Agriculture by the producers. The date of collections of such assessments may be established by the duly certified agency representing the producers of any agricultural product referred to in G.S. 106-550. (1955, c. 374.)

§ **106-564.3. Alternative method for collection of assessments relating to cattle sold for slaughter.**—As an alternative method for the collection of assessments provided for in article 50, of chapter 106 of the General Statutes, as amended, and as the same relates to cattle sold for slaughter, upon the request of the duly certified agency of the producers of cattle which are to be sold for slaughter, the Commissioner of Agriculture shall notify, by registered letter, all livestock auction markets, slaughterhouses, abattoirs, packinghouses, and any and all persons, firms and corporations engaged in the buying, selling or handling of cattle for slaughter in this State, and on and after the date specified in the letter the assessments approved and in force under said referendum shall be deducted by the purchaser, or his agent or representative, from the purchase price of any such cattle bought, acquired or sold for slaughter. It shall be unlawful for any livestock auction market, slaughterhouse, abattoir, packinghouse or the admistrators or managers or agents of same or for any person, firm or corporation to acquire, buy or sell cattle for slaughter without deducting the assessments previously authorized by said referendum. The assessment or assessments for any month so deducted, shall, on or before the 20th day of the following month, be remitted by such purchaser as above described, to the Commissioner of Agriculture of North Carolina, who shall thereupon pay the amount of the assessments to the duly certified agency of the producers of such cattle sold for slaughter entitled thereto. The books and records of all such livestock auction markets, slaughterhouses, abattoirs, packinghouses, or persons, firms or corporations engaged in buying, acquiring or selling cattle for slaughter shall at all times during regular business hours be open for the inspection by the Commissioner of Agriculture or his duly authorized agents. Provided, however, that if any livestock auction market, slaughterhouse, abattoir, packinghouse, or any person, firm or corporation engaged in buying, selling or handling cattle for slaughter in this State shall fail to collect or pay such assessments so deducted to the Commissioner of Agriculture of North Carolina, as herein provided, then and in such event suit may be brought by the duly certified agency concerned in a court of competent jurisdiction to enforce the collection of such assessments. (1959, c. 1176.)

§ **106-565. Subsequent referendum.** — In the event such referendum so to be conducted as herein provided shall not be supported by two thirds or more of those eligible for participation therein and voting therein, then the duly certified agency conducting the said referendum shall have full power and authority to call another referendum for the purposes herein set forth in the next succeeding year, on the question of an annual assessment for three years. (1947, c. 1018, s. 16.)

§ **106-566. Referendum as to continuance of assessments approved at prior referendum.**—In the event the first such referendum or any subsequent referendum is carried by the votes of two thirds or more of the eligible farmers participating therein and assessments in pursuance thereof are levied annually for the period set forth in the call for such referendum, then the agency conducting such referendum shall in its discretion have full power and authority to call and conduct during the third year of such first period or the last year of any subsequent period another referendum in which the farmers and producers of such agricultural commodity shall vote upon the question of whether or not such assessments shall be continued for the next ensuing three years or continued for the next ensuing six years. (1947, c. 1018, s. 17; 1965, c. 1046, s. 2.)

Editor's Note. — The 1965 amendment substituted "the first such referendum or any subsequent referendum" for "such referendum" near the beginning of the section, substituted "period" for "three years" preceding "set forth," inserted "first period or the last year of any subsequent" and added "or continued for the next ensuing six years" at the end of the section.

§ **106-567. Rights of farmers dissatisfied with assessments; time for demanding refund.**—In the event such referendum is carried in the affirmative and the assessment is levied and collected as provided herein and under the regulations to be promulgated by the duly certified agency conducting the same, any farmer or producer upon and against whom such annual assessments shall have been levied and collected under the provisions of this article, if dissatisfied with said assessment and the result thereof, shall have the right to demand of and receive from the treasurer of said agency a refund of such annual assessment so collected from such farmer or producer, provided such demand for refund is made in writing within thirty days from the date on which said assessment is collected from such farmer or producer. Provided, however, that as to growers or producers of potatoes or peaches the right of refund of assessments as provided herein shall be contingent upon such growers or producers having paid said assessment on or before the end of the assessment year in which the assessment was levied. The assessment year shall be determined by the duly certified commission, council, board or agency representing the respective commodity: Provided further, that any farmer or producer of potatoes or peaches who fails to make any protest against the assessment and levy in writing, addressed to the duly certified commission, council, board or agency representing the commodity concerned, within thirty days from the date such assessment shall become due and payable, then, and in such event, suit may be brought by the duly certified commission, council, board or agency concerned in a court of competent jurisdiction to enforce the collection of the assessment. (1947, c. 1018, s. 18; 1959, c. 311.)

§ **106-568. Publication of financial statement by treasurer of agency; bond required.**—In the event of the levying and collection of assessments as herein provided, the treasurer of the agency conducting same shall within thirty days after the end of any calendar year in which such assessments are collected, publish through the medium of the press of the State a statement of the amount or amounts so received and collected by him under the provisions of this article. Before collecting and receiving such assessments, such treasurer shall give a bond in the amount of at least the estimated total of such assessments as will be collected, such bond to have as surety thereon a surety company licensed to do business in the State of North Carolina, and to be in the form and amount approved by the agency conducting such referendum and to be filed with the chairman or executive head of such agency. (1947, c. 1018, s. 19.)

Article 50A.

Promotion of Agricultural Research and Dissemination of Findings.

§ **106-568.1. Policy as to joint action of farmers.**—It is declared to be in the public interest that North Carolina farmers producing agricultural products of all kinds, including cotton, tobacco, peanuts, soybeans, potatoes, vegetables, berries, fruits, livestock, livestock products, poultry and turkeys, and any other agricultural products having domestic and/or foreign markets, be permitted to act jointly in cooperation with each other in encouraging an expanding program of agricultural research and the dissemination of agricultural research findings. (1951, c. 827, s. 1.)

§ **106-568.2. Policy as to referendum and assessment.**—It is further declared to be in the public interest and highly advantageous to the economic development of the State that farmers, producers, and growers of agricultural commodities using commercial feed and/or fertilizers or their ingredients be permitted by referendum held among themselves to levy upon themselves an assessment of five cents (5c) per ton on mixed fertilizers, commercial feed, and their ingredients (except lime and land plaster) to provide funds through the Agricultural Foundation to supplement the established program of agricultural research and dissemination of research facts. (1951, c. 827, s. 2.)

§ **106-568.3. Action of Board of Agriculture on petition for referendum.**—The State Board of Agriculture, upon a petition being filed with it so requesting and signed by the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall examine such petition and upon finding that it complies with the provisions of this article shall authorize the holding of a referendum as hereinafter set out and the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall thereupon be fully authorized and empowered to hold and conduct on the part of the producers and growers of the commodities herein mentioned a referendum on the question of whether or not such growers and producers shall levy upon themselves an assessment under and subject to and for the purposes stated in this article. (1951, c. 827, s. 3.)

§ **106-568.4. By whom referendum to be managed; announcement.**—The governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall arrange for and manage any referendum conducted under the provisions of this article but shall, sixty days before the date upon which it is to be held, fix, determine, and publicly announce in each county the date, hours, and polling places in that county for voting in such referendum, the amount and basis proposed to be collected, the means by which such assessment shall be collected as authorized by the growers and producers, and the general purposes for which said funds so collected shall be applied. (1951, c. 827, s. 4.)

§ **106-568.5. When assessment shall and shall not be levied.**—If in such referendum more than one third of the farmers and producers eligible to participate therein and voting therein shall vote in the negative and against the levying or collection of such assessment, then in such event no assessment shall be levied or collected, but if two thirds or more of such farmers and producers voting therein shall vote in the affirmative and in favor of the levying or collection of such assessment, then such assessment shall be collected in the manner hereinafter provided. (1951, c. 827, s. 5.)

§ **106-568.6. Determination and notice of date, area, hours, voting places, etc.**—The three organizations herein designated to hold such referendum shall fix the date, area, hours, voting places, rules and regulations with respect to the holding of such referendum and cause the same to be published in the press of the State at least sixty days before holding such referendum and shall certify such information to the State Commissioner of Agriculture and to each of the farm organizations of the State. Such notice, so published and furnished to the several agencies, shall contain, in addition to the other information herein required, a statement of the amount of annual assessment proposed to be levied, and the purposes for which such assessment shall be applied. (1951, c. 827, s. 6.)

§ 106-568.7. Preparation and distribution of ballots; poll holders; canvass and announcement of results.—The governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall prepare and distribute in advance of such referendum all necessary ballots and shall under rules and regulations, adopted and promulgated by the organizations holding such referendum, arrange for the necessary poll holders and shall, within ten days after the date of such referendum, canvass and publicly declare the results thereof. (1951, c. 827, s. 7.)

§ 106-568.8. Collection and disposition of assessment; report of receipts and disbursements; audit.—In the event two thirds or more of the eligible farmers and producers participating in said referendum vote in favor of such assessment, then said assessment shall be collected for a period of three (3) years under rules, regulations, and methods as provided for in this article. The assessments shall be added to the wholesale purchase price of each ton of fertilizer, commercial feed, and/or their ingredients (except lime and land plaster) by the manufacturer of said fertilizer and feed. The assessment so collected shall be paid by the manufacturer into the hands of the North Carolina Commissioner of Agriculture on the same tonnage and at the same time and in the same manner as prescribed for the reporting of the inspection tax on commercial feeds and fertilizers as prescribed by G.S. 106-50.6 and 106-99. The Commissioner shall then remit said five cents (5c) per ton for the total tonnage as reported by all manufacturers of commercial feeds, fertilizers, and their ingredients to the treasurer of the North Carolina Agricultural Foundation, Inc., who shall disburse such funds for the purposes herein enumerated and not inconsistent with provisions contained in the charter and bylaws of the North Carolina Agricultural Foundation, Inc. Signed copies of the receipts for such remittances made by the Commissioner to the treasurer of the North Carolina Agricultural Foundation, Inc., shall be furnished the Commissioner of Agriculture, the North Carolina Farm Bureau Federation, and the North Carolina State Grange. The treasurer of the North Carolina Agricultural Foundation, Inc., shall make an annual report at each annual meeting of the Foundation directors of total receipts and disbursements for the year and shall file a copy of said report with the Commissioner of Agriculture and shall make available a copy of said report for publication.

It shall be the duty of the Commissioner of Agriculture to audit and check the remittances of five cents (5c) per ton by the manufacturer to the Commissioner in the same manner and at the same time as audits and checks are made of remittances of the inspection tax on commercial feeds and fertilizers. (1951, c. 827, s. 8.)

§ 106-568.9. Refunds to farmers.—In the event such a referendum is carried in the affirmative and the assessment is levied and collected as herein provided and under the regulations to be promulgated by the duly certified agencies conducting the same, any farmer upon whom and against whom any such assessment shall have been added and collected under the provisions of this article, if dissatisfied with the said assessment, shall have the right to demand of and receive from the treasurer of said North Carolina Agricultural Foundation, Inc., a refund of such amount so collected from such farmer or producer provided such demand for refund is made in writing within thirty days from the date of which said assessment is collected from such farmer or producer. (1951, c. 827, s. 9.)

§ 106-568.10. Subsequent referenda; continuation of assessment.—If the assessment is defeated in the referendum, the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall have full power and authority to call another referendum for the purposes herein set out in the next succeeding year on the question of the annual assessment for three years. In the event the assessment carried in a referendum by two thirds or more of the eligible farmers participating therein, such assessment shall be levied annually for the three years set forth in the call for such referendum and a new referendum may be called and conducted during the third year of such period on the question of whether or not such assessment shall be continued for the next ensuing three years. (1951, c. 827, s. 10.)

§ **106-568.11. Effect of more than one-third vote against assessment.**—If in such referendum called under the provisions of this article more than one third of the farmers and producers in the State of North Carolina, eligible to participate and voting therein, shall vote in the negative and against the levying or collection of such assessment, then in such an event no assessment shall be levied or collected. (1951, c. 827, s. 11.)

§ **106-568.12. Effect of two-thirds vote in favor of assessment.**—If in such referendum called under the provisions of this article two thirds or more of the farmers or producers in the State of North Carolina, eligible to participate and voting therein, shall vote in the affirmative and in favor of the levying and collection of such assessment proposed in such referendum on the commodities covered thereby, then such assessment shall be collected in the manner prescribed herein (determined and announced by the agencies conducting such referendum). (1951, c. 827, s. 12.)

ARTICLE 50B.

North Carolina Agricultural Hall of Fame.

§ **106-568.13. North Carolina Agricultural Hall of Fame created.**—There is hereby created and established as an agency of the State of North Carolina the North Carolina Agricultural Hall of Fame. (1953, c. 1129, s. 1.)

§ **106-568.14. Board of directors; membership; compensation.**—The North Carolina Agricultural Hall of Fame shall be under the general supervision and control of a board of directors consisting of the following: The Commissioner of Agriculture of the State of North Carolina, who shall act as chairman; the Director of the North Carolina Agricultural Extension Service; the State Supervisor of Vocational Agriculture; the President of the North Carolina Farm Bureau Federation; the Master of the State Grange, the foregoing being ex officio members; and three members who shall be appointed by the Governor of North Carolina. All of said members shall serve without compensation. (1953, c. 1129, s. 2.)

§ **106-568.15. Terms of directors.** — One of the appointive members shall be appointed for a term of two years, one for a term of four years and one for a term of six years. The successor to each of the appointive members shall be appointed for a term of six years, and in case of a vacancy, the Governor is authorized to appoint a successor for the remainder of the unexpired term. The ex officio members shall serve so long as they hold their respective offices or positions which entitle them to ex officio membership on said board of directors. (1953, c. 1129, s. 3.)

§ **106-568.16. Admission of candidates to Hall of Fame.** — The said board is hereby empowered to formulate rules and regulations governing acceptance and admission of candidates to said North Carolina Agricultural Hall of Fame, provided that no name shall be accepted until an authentic and written record of achievements of said person in agricultural activities shall have been presented to and accepted by a majority vote of said board created by this article, and provided that both men and women are eligible for recognition. (1953, c. 1129, s. 4.)

§ **106-568.17. Acceptance of gifts, bequests and awards; display thereof.**—The said board is hereby empowered to accept and receive gifts, bequests, and awards which are to become the sole property of said North Carolina Agricultural Hall of Fame and are to be kept in a proper manner in a suitable room or hall in some state-owned building in Raleigh, provided that duplicates of such gifts, bequests, and awards may be displayed in a suitable room or hall in the School of Agriculture of the North Carolina State College of Agriculture and Engineering at Raleigh, North Carolina. (1953, c. 1129, s. 5.)

Cross Reference. — For designation of North Carolina State College of Agriculture and Engineering as North Carolina State University at Raleigh, see §§ 116-2, 116-27.

Article 51.

Inspection and Regulation of Sale of Antifreeze Substances and Preparations.

§ **106-569. Definitions.**—When used in this article, unless the context or subject matter otherwise requires:

(1) The term or word "antifreeze" shall include all substances and preparations intended for use as the cooling medium, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the cooling liquid or to lower its freezing point.

(2) The term "person," as used in this article, shall be construed to mean both the singular and plural as the case demands, and shall include individuals, partnerships, corporations, companies and associations. (1949, c. 1165.)

§ **106-570. Adulteration; what constitutes.** — An antifreeze shall be deemed to be adulterated:

(1) If it consists in whole or in part of any substance which will render it injurious to the cooling system of an internal combustion engine or will make the operation of the engine dangerous to the user.

(2) If its strength, quality, or purity falls below the standard of strength, quality, or purity under which it is sold.

(3) If it consists of, or is compounded with calcium chloride, magnesium chloride, sodium chloride, petroleum distillates or other chemicals or substances in quantities harmful to the cooling systems of internal combustion engines. (1949, c. 1165.)

§ **106-571. Misbranding; what constitutes.** — An antifreeze shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular.

(2) If in package form it does not bear a label containing the name and place of business of the manufacturer, packer, seller or distributor; and an accurate statement of quantity of the contents in terms of weight or measure, and they are not plainly and correctly stated on the outside of the package or container. (1949, c. 1165.)

§ **106-572. Inspection, analysis and permit for sale of antifreeze.**—Before any antifreeze shall be sold, exposed for sale, or stored, packed or held with intent to sell within this State, a sample thereof may be inspected under the supervision of the State Chemist in the Department of Agriculture, created by chapter 106 of the General Statutes. Upon application of the manufacturer, packer, seller or distributor and the payment of license or inspection fee of twenty-five dollars ($25.00) for each brand or type of antifreeze submitted, the State Chemist shall subject to inspection or analysis the antifreeze so submitted. If the antifreeze is not adulterated or misbranded, if it meets the standards established and promulgated by the North Carolina State Board of Agriculture, established by chapter 106 of the General Statutes, and if the said antifreeze is not such a type or kind that is in violation of this article, the Commissioner of Agriculture shall give the applicant a written license or permit authorizing the sale of such antifreeze in this State for the fiscal year in which the license or inspection fee is paid, which license or permit shall be subject to renewal annually. If the Commissioner of Agriculture shall, at a later date, find that the antifreeze product or substance to be sold, exposed for sale or held with intent to sell has been materially altered or adulterated, or a change has been made in the name, brand or trademark under which the antifreeze is sold, or that it violates the provisions of this article, the Commissioner of Agriculture shall notify the applicant and the license or permit shall be canceled forthwith. No license or permit for the sale of antifreeze in this State shall be issued until application has been made as provided by this article and such samples of the product as may be required by the State Chemist to qualify it have been submitted and until the State Chemist notifies the Commissioner of Agriculture that said antifreeze meets the requirements of this article. (1949, c. 1165.)

§ **106-573. Article to be administered by the Commissioner of Agriculture.** — The Commissioner of Agriculture shall administer and enforce the provisions of this article by inspections, chemical analysis, or any other appropriate methods. All quantities or samples of antifreeze submitted for inspection or analysis shall be taken from stocks in this State or intended for sale in this State, or the Commissioner of Agriculture, through his agents, may call upon the manufacturer or distributor applying for an inspection of antifreeze to supply such sample thereof for analysis. The Commissioner of Agriculture, through his agents or inspectors, shall have free access during business hours to all places of business, buildings, vehicles, cars and vessels used in the manufacture, transportation, sale or storage of any antifreeze, and the Commissioner of Agriculture, acting through his agents, may open any box, carton, parcel, package or container holding or containing or supposed to contain any antifreeze and may take therefrom samples for analysis. If it appears that any of the provisions of this article have been violated, the Commissioner of Agriculture, acting through his authorized agents, inspectors or representatives, is hereby authorized to issue a "stop-sale" order which shall prohibit further sale of any antifreeze being sold, exposed for sale or held with intent to sell within this State in violation of this article, until the law has been complied with or said violation has otherwise been legally disposed of. Any antifreeze not in compliance with the provisions of this article shall be subject to seizure upon complaint of the Commissioner of Agriculture or any of his agents, inspectors or representatives to a court of competent jurisdiction in the area in which said antifreeze is located. In the event the court finds said antifreeze to be in violation of this article, it may order the condemnation of said antifreeze, and the same shall be disposed of in any manner consistent with the rules and regulations of the Board of Agriculture and the laws of the State: Provided, that in no instance shall the disposition of said antifreeze be ordered by the court without first giving the claimant or owner of same an opportunity to apply to the court for the release of said antifreeze or for permission to process or relabel said antifreeze so as to bring it into compliance with this article. In case any "stop-sale" order shall be issued under the provisions of this article, the agents, inspectors or representatives of the Commissioner of Agriculture shall release the antifreeze so withdrawn from sale when the requirements of the provisions of this article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. (1949, c. 1165.)

§ 106-574. Rules and regulations.—The Board of Agriculture shall have authority to establish and promulgate such rules and regulations and standards as are necessary to promptly and efficiently enforce the provisions of this article. The Commissioner of Agriculture shall administer this article and shall execute all orders, rules and regulations established by the Board of Agriculture. All authority vested in the Commissioner of Agriculture by virtue of the provisions of this article may, with like force and effect, be executed by such employees, agents, inspectors and representatives of the Commissioner of Agriculture as he may, from time to time, designate for such purpose. The Commissioner of Agriculture may publish or furnish, upon request, a list of the brands and classes or types of antifreeze inspected by the State Chemist during the fiscal year which have been found to be in accord with this article and for which a license or permit for sale has been issued, and it shall be lawful for any manufacturer, packer, seller, or distributor of antifreeze to show, by advertising, in any manner, that his or its brand of antifreeze has been inspected, analyzed and licensed for sale by the Commissioner of Agriculture, acting through the State Chemist. It shall be unlawful for any manufacturer, packer, seller, or distributor of antifreeze to advertise, in any manner, that such antifreeze so advertised for sale has been approved by the Commissioner of Agriculture. (1949, c. 1165.)

§ 106-575. Gasoline and oil inspectors may be designated as agents of the Commissioner.—The Commissioner of Agriculture, with the approval of the Commissioner of Revenue, may designate any or all of the gasoline and oil inspectors appointed under article 3 of chapter 119 of the General Statutes as agents and representatives of the Commissioner of Agriculture for the purposes of administering and carrying out the duties imposed by this article. All or any gasoline and oil inspectors designated as agents of the Commissioner of Agriculture pursuant to this section shall have all of the power and authority that may be delegated to them by the Commissioner of Agriculture for the enforcement of this article; and when acting in the enforcement of this article, such gasoline and oil inspectors shall be deemed to be agents and representatives of the Commissioner of Agriculture. (1949, c. 1165.)

§ 106-576. Submission of formula or chemical contents of antifreeze to the Commissioner.—When any manufacturer, packer, seller or distributor of antifreeze applies to the Commissioner of Agriculture for a license or permit to sell antifreeze in this State, the Commissioner of Agriculture may require such manufacturer, packer, seller, or distributor to furnish the State Chemist a statement of the formula or contents of such antifreeze, which said statement shall conform to rules and regulations established by the Board of Agriculture: Provided, that the statement or formula or contents need not include the inhibitor ingredients if such inhibitor ingredients total less than five percent (5%) by weight of the antifreeze and if in lieu thereof the manufacturer, packer, seller or distributor furnishes the State Chemist with satisfactory evidence, other than by disclosure of the inhibitor ingredients, that the said antifreeze is in conformity with the provisions of § 106-570. All statements of contents, formulae or trade secrets furnished under this section shall be privileged and confidential and shall not be made public or open to the inspection of any person, firm, association or corporation other than the State Chemist. All such statements of contents shall not be subject to subpoena nor shall the same be exhibited or disclosed before any administrative or judicial tribunal by virtue of any order or subpoena of such tribunal unless with the consent of the person, firm, association or corporation owning and/or furnishing to the State Chemist such statement of contents. (1949, c. 1165.)

§ 106-577. Penalties for violation. — Any person, firm, association or corporation violating or failing to comply with any of the provisions of this article, or any rule, regulation or standard issued pursuant thereto, shall be deemed guilty of a misdemeanor, and upon plea of guilty or conviction shall be punished in the discretion of the court, and each day that any violation of this article shall exist shall be deemed to be a separate offense. Whenever the Commissioner of Agriculture or his agents or representatives shall discover that any antifreeze is being sold or has been sold in violation of this article, the Commissioner of Agriculture or his agent or representative may furnish the facts to the solicitor or prosecuting officer of the court having jurisdiction in the area in which such violation occurred, and it shall be the duty of such prosecuting officer or solicitor to promptly institute proper legal proceedings. (1949, c. 1165.)

§ **106-578. Appropriation for enforcement of article.**—All license or permit fees provided for in this article shall be collected by the Commissioner of Agriculture, deposited in the Department of Agriculture fund, of which the State Treasurer is custodian, and shall be expended for the administration and enforcement of this article. The Commissioner of Agriculture is hereby authorized to employ such number of agents, clerks and experts as may be necessary to administer and effectively enforce all of the provisions of this article. There shall, from time to time, be allotted by the Budget Bureau from the inspection fees collected under G.S. 119-18 such sums as may be necessary to administer and effectively enforce the provisions of this article. (1949, c. 1165.)

§ **106-579. Copy of analysis in evidence.**—A copy of the analysis made by any chemist of the Department of Agriculture of antifreeze certified to by him shall be admitted as evidence in any court of the State on trial of any issue involving the merits of antifreeze as defined and covered by this article. (1949, c. 1165.)

Article 52.

Agricultural Development.

§ **106-580. Short title.** — This article may be cited as the "Agricultural Development Act." (1959, c. 1177, s. 1.)

§ **106-581. Intent and purpose.**—It is hereby declared to be the intent and purpose of this article to provide for a plan of assistance to the farmers and other citizens of this State in increasing agricultural income by making available to the various counties of the State the full resources of the Agricultural Extension Service, and other facilities, within the said counties, by means of the Farm and Home Development Program and the Rural Development Program as authorized by Title 7, United States Code, and other existing agricultural agencies. (1959, c. 1177, s. 2.)

§ **106-582. Counties authorized to utilize facilities to promote programs.**—The several counties of this State are hereby authorized to utilize the facilities of existing extension and other agricultural advisory committees for the purpose of installing and promoting the Farm and Home Development Program and/or the Rural Development Program, or other program within the purview of this article, in the said counties; or, the several counties may, within their discretion, with the cooperation of the Agricultural Extension Service, create such new additional committees as may be needed for this purpose. (1959, c. 1177, s. 3.)

§ **106-583. Policy of State; cooperation of departments and agencies with Agricultural Extension Service.**—It is declared to be the policy of the State of North Carolina to promote the efficient production and utilization of the products of the soil as essential to the health and welfare of our people and to promote a sound and prosperous agriculture and rural life as indispensable to the maintenance of maximum prosperity. For the attainment of these objectives the North Carolina Department of Agriculture, the School of Agriculture of North Carolina College and each and every other department and agency of the State of North Carolina is hereby empowered to cooperate with the Agricultural Extension Service and the committees authorized by this article to provide: Development of new and improved methods of production, marketing, distribution, processing and utilization of plant and animal commodities at all stages from the original producer through to the ultimate consumer; development of present, new, and extended uses and markets for agricultural commodities and by-products as food or in commerce, manufacture or trade; introduction and breeding of new and useful agricultural crops, plants and animals, particularly those plants and crops which may be adapted to utilization in chemical and manufacturing industries; research, counsel and advice on new and more profitable uses of our resources of agricultural manpower, soils, plants, animals and equipment than those to which they are now devoted; methods of conservation, development, and use of land, forest, and water resources for agricultural purposes; guidance in the design, development, and more efficient and satisfactory use of farm buildings, farm homes, farm machinery, including the application of electricity, water and other forms of power; techniques relating to the diversification of farm enterprises, both as to the type of commodities produced, and as to the types of operations performed, on the individual farm; and assistance in appraising opportunities for making fuller use of the natural, human and community resources in the various counties of this State to the end that the income and level of living of rural people be increased. (1959, c. 1177, s. 4.)

Cross Reference. — For designation of North Carolina State College of Agriculture and Engineering as North Carolina State University at Raleigh, see §§ 116-2, 116-27.

§ **106-584. Maximum use of existing research facilities.**—In effectuating the purposes of this article, maximum use may be made of existing research facilities owned or controlled by the State of North Carolina or by the federal government and of the facilities of the State and federal extension services. (1959, c. 1177, s. 5.)

§ **106-585. Appropriations by counties; funds made available by Congress.**—The several counties of this State are hereby authorized to make such appropriations and expend such funds as shall be necessary to defray any part of the expenses of the programs authorized by this article, including the salaries of the extension agents, special agents and other necessary personnel, and any funds made available by the Congress of the United States for this purpose may be accepted and used therefor. (1959, c. 1177, s. 6.)

§ **106-586. Authority granted by article supplementary.** — The authority granted by this article is in addition to that granted to the Extension Service by the Congress of the United States and in no way infringes upon the administrative authority of the director of the Extension Service or the existing policies of the Extension Service. (1959, c. 1177, s. 7.)

§ **106-587. County and municipal expenditures for purposes of article.**—Any county or municipality in this State may appropriate and contribute funds for the purposes of this article and county and municipal expenditures for the aforesaid purposes are declared to be necessary expenses; and county expenditures therefor are declared to be for special purposes, for which special approval of the General Assembly is hereby given. (1959, c. 1177, s. 8.)

Chapter 107.

Agricultural Development Districts.

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107-25. Liberal construction; defects in proceeding.

§ **107-1. Clerk's power to establish; public use.**—The clerk of the superior court (herein called the "clerk" or "the court") of any county of the State of North Carolina shall have jurisdiction, power, and authority to establish agricultural development districts in his county for the purpose of clearing and putting in suitable condition for the beginning of cultivation good grades of lands, forested or cutover, suitable for agriculture, and it is hereby declared that the said development shall be considered a public benefit and conducive to the public welfare. (1917, c. 131, s. 1; C. S., s. 4959.)

§ **107-2. Landowners' petition and deposits.**—Whenever a petition signed by all the landowners in a proposed agricultural development district shall be filed in the office of the clerk of the superior court of any county in which a part of said lands is located, setting forth and certifying that it is their desire and intention to form an agricultural development district (hereinafter called "the district") of an area aggregating not less than one thousand acres, and that it is their purpose, when cleared and put into condition for cultivation, to sell the said land to settlers on long time terms and at reasonable prices, they shall deposit with the clerk:

(1) A certified check for not less than one thousand dollars, plus ten cents per acre for each additional acre in the proposed district, from which funds the clerk shall from time to time meet the actual expenses of examining and verifying and other expenses incidental to forming the district.
(2) A complete map of the lands to be included in the district.
(3) A soil map showing the types of soils.
(4) A drainage map showing the natural drainage of the lands, and any proposed system of drainage it is intended to establish.
(5) Certificates of title by a reputable attorney of the county.
(6) An estimate of the cost of improvements under the plan submitted.
(7) A certificate that the lands when improved will have a market value of at least twice the amount of the total cost of the proposed improvement. (1917, c. 131, s. 2; C. S., s. 4960.)

§ 107-3. Viewers' appointment.—The clerk shall then appoint a board of viewers (hereinafter called "the viewers"), composed of three members, one a competent civil engineer and the other two practical agriculturists, to examine the lands and data submitted to the clerk by the landowners, and report as to the facts being virtually as stated, or to give their opinion as to any variations. (1917, c. 131, s. 2; C. S., s. 4961.)

§ 107-4. Viewers' report.—Their written report shall be filed within two weeks from the date of their appointment. The clerk shall consider this report. If the viewers report that the project is not practicable or will not be for the public welfare, and the clerk shall approve such findings, the petition shall be dismissed at the cost of the petitioners. (1917, c. 131, s. 2; C. S., s. 4962.)

§ 107-5. Plan submitted to Department of Conservation and Development.—If the viewers report that the project is practicable, and that it will be for the public welfare and conducive to the general welfare of the community, and the court shall so find, then all of the data and reports of the proceedings shall be submitted to the Department of Conservation and Development, which shall designate:

(1) An engineer to survey and approve of the boundaries and drainage and road plans.
(2) An attorney of reputation to examine and approve of the chains of title submitted.
(3) A forester to make an estimate of the cost of clearing.
(4) A soil expert to report on the availability of the land for agricultural purposes. (1917, c. 131, s. 3; C. S., s. 4963.)

§ 107-6. District established, if Department approves.—The Department of Conservation and Development shall consider these reports, data, and plans, and, if it approves the same, shall so certify to the clerk of the court, who shall then declare the district established. (1917, c. 131, s. 3; C. S., s. 4964.)

§ 107-7. Board of agricultural development commissioners appointed.—After the said district shall have been declared established as aforesaid, and the complete plans therefor approved, the clerk shall appoint two persons, one of whom shall be a landowner of the district, the other a practical agriculturist of good character, not a landowner of the district, and these two shall choose a third, who may or may not be a landowner of the district, and the three so appointed and chosen shall be designated as the board of agricultural development commissioners of .... district. (1917, c. 131, s. 4; C. S., s. 4965.)

§ 107-8. Commissioners incorporated; powers; officers; superintendent's bond.—Such commissioners when so appointed and chosen shall be immediately created a body corporate under the name and style of the board of agricultural development commissioners of .... district (hereinafter called "the commissioners" or "the board of commissioners"), with the right to hold property and convey the same, to sue and be sued, and shall possess such other powers as usually pertain to corporations. They shall organize by electing from among their number a chairman and vice-chairman. They shall also elect a secretary, within or without their body, and shall adopt bylaws for the government of their proceedings. The treasurer of the county in which the proceedings are instituted shall be ex officio treasurer of such board of commissioners. Such board of commissioners shall adopt a seal, which it may alter at pleasure. They shall have and possess such powers as are herein granted. The name of such district shall constitute a part of its corporate name. The commissioners shall appoint a competent person as superintendent of construction; such person shall furnish a bond, to be approved by the commissioners, in the penal sums of ten thousand dollars, conditioned upon the honest and faithful performance of his duties. Such bond shall be in favor of the board of commissioners. In the event of any vacancy in the membership of the board of commissioners the remaining members shall fill such vacancy, subject to the approval of the court. (1917, c. 131, s. 4; C. S., s. 4966.)

§ **107-9. Classification of lands according to benefits.**—It shall be the further duty of the viewers to personally examine the lands in the district and classify them with reference to the benefits they will receive from the improvements to be made. The land benefits shall be separated into five classes. The land receiving the highest benefit shall be marked Class A; that receiving the next highest benefit, Class B; that receiving the next highest benefit, Class C; that receiving the next highest benefit, Class D; and that receiving the smallest benefit, Class E. The holdings of any one landowner need not necessarily be all in one class, but the number of acres in each class shall be ascertained, though its boundary need not be marked on the ground or shown on the map. The total number of acres owned by one person in each class and the total number of acres benefited shall be determined, and the total number of acres in each class in the entire district shall be ascertained and presented in tabulated form. The scale of assessment upon the several classes of land returned by the viewers shall be in the ratio of five, four, three, two, and one; that is to say, as often as five cents per acre is assessed against the land in Class A, four cents per acre shall be assessed against the land in Class B, and three cents per acre in Class C, and two cents per acre in Class D, and one cent per acre in Class E. This shall form the basis of assessment for benefits to the lands of the district. (1917, c. 131, s. 5; C. S., s. 4967.)

§ **107-10. Appeal from viewers' report.** — Any party aggrieved may, within ten days after the confirmation of the viewers' report, appeal to the superior court in termtime. Such an appeal shall be taken and prosecuted as now provided in special proceedings. Such an appeal shall be based and heard only upon such exceptions theretofore filed by the complaining party, either as to issue of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal. (1917, c. 131, s. 6; C. S., s. 4968.)

§ **107-11. Letting contract for construction.**—The commissioners shall cause notice to be given for two consecutive weeks in some newspaper published in the county wherein said district is located, and such additional publication elsewhere as they deem expedient, of time and place of letting the work of construction, and in such notice they shall specify the approximate amount of work to be done, the time fixed for the completion thereof, and the date appointed for the letting. They, together with the superintendent of the district, shall convene and let to the lowest responsible bidder, either as a whole or in part, or in sections, as they deem most advantageous for the district, the proposed work. The landowners may bid on the work, and in the event of their securing the contract, the work shall be done at actual cost, it being distinctly understood that the landowners are to receive no profit from said contract, and any saving effected shall inure to the benefit of the district. No bids shall be entertained that exceed the estimated cost, except for good and satisfactory reasons it shall be shown that the original estimate was erroneous. The commissioners shall have the right to reject all bids and advertise again the work, if in their judgment the interest of the district will be subserved by so doing. The successful bidder shall be required to enter into a contract with the board of commissioners, and to execute a bond for the faithful performance of such contract, with sufficient surety, in favor of the board of commissioners for the use and benefit of the district, in an amount equal to twenty-five per centum of the estimated cost of the work awarded to him. In canvassing bids and letting the contract the superintendent of construction shall act only in an advisory capacity to the board of commissioners. The contract shall be based on the plans and specifications submitted by the commissioners in a report, and confirmed by the court, the original of which shall remain on file in the office of the clerk and shall be open to the inspection of all prospective bidders. All bids shall be sealed and shall not be opened except under authority of the commissioners, and on the date therefor appointed for the opening of bids. All bids must be accompanied by a certified check for three per centum of the amount of the bid. (1917, c. 131, s. 7; C. S., s. 4969.)

§ **107-12. Payment for work done.**—The superintendent of construction shall make monthly estimates of the amount of work done and shall furnish one copy to the contractor and file the other with the secretary of the board of commissioners, and the commissioners shall within five days after filing of such estimate meet and direct the secretary to draw a warrant in favor of the contractor for ninety per centum of the work done according to the specifications and contract; and upon the presentation of such, properly signed by the chairman or vice chairman and secretary, to the treasurer of the district, he shall pay the amount due thereon. When the work is fully completed and accepted by the superintendent, he shall make an estimate for the whole amount due, including the amounts withheld on the previous monthly estimates, which shall be paid from the fund as before provided. In the event that the landowners receive the contract, the monthly payments shall cover only the actual cost of the work, as certified by the superintendent of construction, to whose certificates shall be attached all payrolls and vouchers. If any contractor to whom said work shall have been let shall fail to perform the same according to the terms specified in his contract, action may be had in behalf of the commissioners against such contractor and his bond in the superior court, for damages sustained in the district, and recovery made against such contractor and his sureties. In such an event the work shall be advertised and relet in the same manner as the original letting. (1917, c. 131, s. 8; C. S., s. 4970.)

§ **107-13. Record book kept by clerk.**—The clerk shall provide a suitable book to be known as the Record Book of the Agricultural Development Commissioners of .... District, in which he shall cause to be recorded every petition, motion, order, record, judgment, or finding of the board of commissioners in every transaction which may come before it, in such a way as to make a complete and continuous record of the case; copies of all the maps and plans are to be furnished by the commissioners, and marked by the clerk "Official Copy," which shall be kept on file by him in his office, and one of the copies shall be pasted or otherwise attached to his record. (1917, c. 131, s. 9; C. S., s. 4971.)

§ **107-14. Assessment rolls; preparation; contents; execution.**—After the classification of the land and ratios of assessment of the different classes to be made thereon has been confirmed by the court, the commissioners shall ascertain the total cost of improvement, including all incidental expenses, and shall certify under the hand of the chairman and secretary of the board of commissioners to the clerk the said total cost, and said certificate shall be forthwith recorded in the record book and open to the inspection of any landowner in the district. The commissioners shall immediately prepare in duplicate the assessment rolls or agricultural improvement tax lists, giving therein the names of the owners of the land in the district as ascertained from the public records, a brief description of the several tracts of land assessed, and the assessment against each tract of land. The first of these assessment rolls shall provide assessments sufficient for the payment of interest on the bond issue to accrue the third year after their issue and the installment of principal to fall due at the expiration of the third year after the date of issue, together with such amounts as shall have to be paid for the collection and handling of the same. The second assessment roll shall make like provision for the fourth year, and in like manner assessment rolls shall make provision for each succeeding year during the life of the bonds. Each of the said assessment rolls shall specify the time when collectible, and shall be numbered in their order, and the amounts assessed against the several tracts of land shall be in accordance with the benefits received, as shown by the classification and ratio of the assessment made by the viewers. These assessment rolls shall be signed by the clerk and by the secretary of the board of commissioners. (1917, c. 131, s. 10; C. S., s. 4972.)

§ 107-15. Filing and collection of assessment rolls; to be lien on land.—One copy of each of said assessment rolls shall be filed in the record book and one copy shall be delivered to the sheriff or other county tax collector, after the clerk has appended thereto an order directing the collection of said assessment, and the said assessment shall thereupon have the force and effect of a judgment as in the case of State and county taxes. These assessments shall constitute a first and paramount lien, second only to State and county taxes, upon the lands assessed for the payment of the bonds and interest thereon as they become due, and shall be collected in the same manner, by the same officers, as the State and county taxes are collected. (1917, c. 131, s. 10; C. S., s. 4973.)

§ 107-16. When assessments due; sale of delinquent lands. — The said assessments shall be due and payable on the first Monday in September each year, and if the same shall not be paid in full by the thirty-first day of December following, it shall be the duty of the sheriff to sell the land or lands so delinquent. The sale of lands for failure to pay such assessments shall be made at the courthouse door in the county in which the lands are located, between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, on the first Monday of February of each year; and if for any necessary cause the sale cannot be made on that date, the sale may be continued from day to day for not exceeding four days, or the land may be readvertised and sold on the first Monday in March succeeding, during the same hours, without any order therefor. In all other respects, except as to the time of the sale of the land, the existing laws as to the collection of State and county taxes shall have application to the collection of assessments under this chapter. (1917, c. 131, s. 10; C. S., s. 4974.)

§ 107-17. Settlement by tax collector. — It shall be the duty of the sheriff or tax collector to pay over to the county treasurer promptly the moneys so collected by him upon said tax assessments, to the end that the said treasurer may have funds in hand to meet the payment of interest and principal due upon outstanding bonds as they mature. (1917, c. 131, s. 10; C. S., s. 4975.)

§ 107-18. Payment of interest and installments on bonds; county treasurer's liability.—It shall be the duty of the county treasurer, and without any previous order from the commissioners, to provide and pay the installments of interest at the time and place as evidenced by the coupons attached to said bonds, and also to pay the annual installments of principal due on said bonds at the time and place as evidenced by said bonds; and the said county treasurer shall be guilty of a misdemeanor and subject, on conviction, to fine and imprisonment, in the discretion of the court, if he shall neglect or fail to make prompt payment of said interest and principal of said bonds, and shall likewise be liable in a civil action for all damages which may accrue to the board of commissioners or holders of said bonds, to either or both of which a right of action is hereby given. (1917, c. 131, s. 10; C. S., s. 4976.)

§ 107-19. New assessment on sale of land.—When any land in the district is sold, as provided in § 107-16, the court shall assess the new owner thereof, and deduct the amount of the new assessment from the assessment of the former owner, and correct the assessment rolls accordingly. (1917, c. 131, s. 10; C. S., s. 4977.)

§ 107-20. Advertisement of intention to issue bonds. — The commissioners shall give notice for three weeks, by publication in some newspaper published in the county in which the district or a part of the district is situated, and shall also post a written or printed notice at the door of the courthouse and at five conspicuous places in the district, reciting that they propose to issue bonds for the payment of the total cost of improvement, giving the amount of the bonds to be issued, the rate of interest they are to bear, and the time when payable. Any landowner in the district not wanting to pay interest on the bonds may within fifteen days after the publication of said notice pay to the county treasurer the full amount for which his land is liable, to be assessed from the classification sheet and certificate of the board of commissioners, showing the total cost of improvements, and have his lands released from liability to be assessed for such improvements. (1917, c. 131, s. 11; C. S., s. 4978.)

§ **107-21. Landowner's waiver.**—Each and every person owning land in the district who shall fail to pay to the county treasurer the full amount for which his land is liable as aforesaid, within the time above specified, shall be deemed as consenting to the issuance of the bonds, and in consideration of the right to pay his proportion in installments, he hereby waives his right of defense to the payment of any assessment which may be levied for the payment of the bonds because of any irregularity or defect in the proceedings prior to this time, except in the case of an appeal as hereinbefore provided, which is not affected by this waiver. (1917, c. 131, s. 12; C. S., s. 4979.)

§ **107-22. Bond issue.**—At the expiration of fifteen days after the expiration of the notice of the bond issue, the board of commissioners may issue bonds of the district for an amount equal to the total estimated cost of the improvements, less such amounts as shall have been paid in in cash to the county treasurer, plus an amount sufficient to pay interest on the bond issue for the three years next following the date of the issue: Provided, that the total principal amount of the bonds to be issued shall not exceed fifty dollars per acre for the land to be improved.

These bonds shall bear six percent interest per annum, payable semiannually, and shall be paid in twenty equal installments. The first installment of the principal shall mature at the expiration of three years from the date of issue, and one installment for each succeeding year for nineteen additional years. The commissioners shall sell these bonds at not less than par and apply the proceeds to the payment of interest on said bonds for the three years next following the date of issue, and the payment of other expenses of the district provided for in this chapter. The proceeds from such bonds shall be for the exclusive use of the district specified on their face. The bonds shall be numbered by the board of commissioners and recorded in the record book, which record shall set out specifically the lands embraced in the district on which the tax has not been paid in full, which land is to be assessed as hereinbefore provided. If any installment of principal or interest represented by said bonds shall not be paid at the time and in the manner when the same shall be due and payable, and such default shall continue for a period of six months, the holder or holders of such bond or bonds upon which default has been made shall have a right of action against said district, or the board of commissioners of said district, wherein the court may issue a writ of mandamus against said district, its officers, including the tax collector and treasurer, directing the levying of a tax or specific assessment as herein provided and the collection of the same in such sum as may be necessary to meet any unpaid installment of principal and interest and the cost of said action; and such other remedies are hereby vested in the holder or holders of such bond or bonds in default as may be authorized by law; and the right of action is hereby vested in the holder or holders of such bond or bonds upon which default has been made authorizing them to institute suit against any officer on his official bond for failure to perform any duty imposed by the provisions of this chapter. The official bonds of the tax collector and the county treasurer shall be liable for the faithful performance of the duties herein assigned them. Such official bonds may be increased by the board of county commissioners. (1917, c. 131, s. 13; C. S., s. 4980.)

§ 107-23. Fees allowed sheriff and treasurer. — The fee allowed the sheriff or the tax collector for collecting the tax as prescribed in this chapter shall be two per centum of the amount collected, and the fee allowed the county treasurer for disbursing the revenue obtained from the sale of the bonds shall be one per centum of the amount disbursed: Provided, no fee shall be allowed to the sheriff or other tax collector, or to the county treasurer, for collecting or receiving the revenue obtained from the sale of said bonds, nor for disbursing the revenue raised for paying off said bonds: Provided further, that in those counties where the sheriff, tax collector, and treasurer are on a salary basis, no fee whatever shall be allowed for collecting or disbursing the funds of the district. (1917, c. 131, s. 13 (2d); C. S., s. 4981.)

§ 107-24. Fees and expenses under chapter.—Any engineer employed under the provisions of this chapter shall receive such compensation for his services as shall be fixed and determined by the commissioners. The viewers, other than the engineer, shall receive five dollars per day; the rodman, axeman, chainman, and other laborers shall receive not to exceed two dollars per day. All other fees and costs incurred under the provisions of this chapter shall be the same as are usual for like services in other cases. Said costs and expenses shall be paid, by order of the court, out of the funds provided for that purpose, and the board of commissioners shall issue warrants therefor when funds shall be in the hands of the treasurer. Any engineer, viewer, superintendent of construction, or other person appointed under this chapter may be removed by the court, upon petition, for corruption, neglect of duty, or other good and satisfactory cause shown. (1917, c. 131, s. 14; C. S., s. 4982.)

§ 107-25. Liberal construction; defects in proceeding.—The provisions of this chapter shall be liberally construed to promote the objects herein declared and for the general welfare of the State. The collection of assessments shall not be defeated, whether proper notices have been given, by reason of any defect in the proceedings occurring prior to the order of the court confirming the final report of the commissioners; but such orders shall be conclusive and final that all prior proceedings were regular and according to law, unless they were appealed from. If on appeal the court shall deem it just and proper to release any person, or modify his assessment or liability, it shall in no manner affect the rights and legality of any other person than the appellant, and the failure to appeal from the order of the court within the time specified shall be a waiver of any illegality in the proceedings, and the remedies provided for in this chapter shall exclude all other remedies. (1917, c. 131, s. 15; C. S., s. 4983.)

Chapter 108.

Board of Public Welfare.

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ARTICLE 1.

State Board of Public Welfare.

§ **108-1. Appointment, term of office, and compensation.**—There shall be appointed by the Governor seven members who shall be styled "The State Board of Public Welfare," and at least one of such persons shall be a woman. The terms of office of the members of the Board shall be six years. Upon the expiration of the terms of office of the present members of the Board, the Governor shall appoint their successors as follows: Three members to be appointed on April first, one thousand nine hundred and forty-three and every six years thereafter; two members to be appointed on April first, one thousand nine hundred and forty-five and every six years thereafter; and two members to be appointed on April first, one thousand nine hundred and forty-seven and every six years thereafter. Any vacancy in the Board at present or which may hereafter arise from any cause whatsoever shall be filled for the residue of the term by appointment by the Governor. The Governor shall designate the chairman of the Board so selected, which chairmanship so designated may be changed as the Governor may deem best to promote the efficiency of the service. The members of the Board shall receive such per diem as is customary for State boards and commissions as provided for in G.S. 138-5, and they shall receive their necessary expenses: Provided, however, that the chairman of the said Board, when acting as a member of the State Board of Allotments and Appeal shall receive a per diem to be fixed by the Director of the Budget, together with actual expenses incurred in attending meetings. (1868-9, c. 170, s. 1; Code, s. 2331; Rev., s. 3913; 1909, c. 500; 1917, c. 170, s. 1; C. S., s. 5004; 1937, c. 319, s. 1; 1943, c. 775, s. 1; 1945, c. 43, s. 1; 1963, c. 392.)

Editor's Note. — The 1963 amendment substituted "receive such per diem as is customary for State boards and commissions as provided for in G.S. 138-5, and" for "serve without pay, except that" in the last sentence.

Cited in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

§ **108-1.1. Change of name in statutes and regulations relating to Board.**—Wherever in the General Statutes of North Carolina, or in any session law, public, public-local, private or special act of the General Assembly, or in any rule or regulation, a duty or obligation is imposed upon the State Board of Charities and Public Welfare, or any authority, privilege or power is granted to the State Board of Charities and Public Welfare, the same shall be construed as referring to the State Board of Public Welfare. (1945, c. 43, s. 2.)

§ **108-2. Meetings of Board.** — The Board shall hold meetings at least quarterly, and whenever called in session by the chairman, and shall make such rules and orders for the regulation of its own proceedings as it deems proper. (1868-9, c. 170, s. 2; Code, s. 2332; Rev., ss. 2807, 3914; 1909, c. 899; 1917, c. 170, s. 1; C. S., s. 5005.)

§ **108-3. Powers and duties of Board.** — The Board shall have the following powers and duties, to wit:

(1) To investigate and supervise, through and by its own members or its agents or employees, the whole system of the charitable and penal institutions of the State, and to recommend such changes and additional provisions as it may deem needful for their economical and efficient administration.

(2) To study the subjects of nonemployment, poverty, vagrancy, housing conditions, crime, public amusement, care and treatment of prisoners, divorce and wife desertion, the social evil and kindred subjects and their causes, treatment, and prevention, and the prevention of any hurtful social condition.

(3) To study and promote the welfare of the dependent and delinquent child and to provide, either directly or through a bureau of the Board, for the placing and supervision of dependent, delinquent, and defective children.

(4) To inspect and make report on private orphanages, institutions, maternity homes, and persons or organizations receiving and placing children, and to require such institutions to submit such annual reports and information as the State Board may determine: Provided, that the term "maternity homes" used hereinbefore in this subdivision shall be construed to include institutions or homes maintained not only for the purpose of receiving pregnant women for care previous to, during and following delivery, but institutions or lying-in homes wherein pregnant women are received for care previous to and following delivery, the said delivery taking place in a hospital to which this statute does not apply.

(5) To grant license for one year to such persons or agencies to carry on such work as it believes is needed and is for the public good, and is conducted by reputable persons or organizations, and to revoke such

license when in its opinion the public welfare or the good of the children therein is not being properly subserved: Provided, this subdivision shall not apply to any orphanage chartered by the laws of the State of North Carolina, owned by a religious denomination or a fraternal order, and having a plant and assets not less than sixty thousand dollars ($60,000), nor shall it apply to orphanages operated by fraternal orders, under charters of other states, which have complied with the corporation laws of North Carolina and have that amount of property.

(6) To issue bulletins and have same printed and in other ways to inform the public as to social conditions and the proper treatment and remedies for social evils.

(7) To issue subpoenas and compel attendance of witnesses, administer oaths, and to send for persons and papers whenever it deems it necessary in making the investigations provided for herein or in the other discharge of its duties, and to give such publicity to its investigations and findings as it may deem best for the public welfare.

(8) To employ with the approval of the Governor, a trained investigator of social service problems who shall be known as the Commissioner of Public Welfare, and to employ such other inspectors, officers, and agents as it may deem needful in the discharge of its duties. The salary of the Commissioner shall be fixed by the Governor subject to the approval of the Advisory Budget Commission.

(9) To recommend to the legislature social legislation and the creation of necessary institutions.

(10) To have the authority to establish, maintain and provide rules and regulations for the administration of a system of personnel standards on a merit basis with a uniform schedule of compensation for all employees of the State Board and of the county welfare departments: Provided, that the compensation schedule for employees of the State Board shall be established in conformity with the provisions of the State Personnel Act.

(11) To attend, either through its members or agents, social service conventions and similar conventions, and to assist in promoting all helpful publicity tending to improve social conditions of the State, and to pay out of the funds appropriated to the State Board office expenses, salaries of employees, and all other expenses incurred in carrying out the duties and powers hereinbefore set out.

(12) To receive, hold and administer for the purposes for which it is organized, any funds donated to it, either by will or deed, and to administer said funds in accordance with the instructions of the will or deed creating them.

(13) To accept donations and gifts or any and all kinds of commodities, services or moneys which may be donated or given by the federal or State government, or by any political subdivision of the State. Such donations shall be used exclusively by said Board for relief purposes in this State, and said Board is hereby fully authorized and empowered, under rules and regulations adopted by it, to provide for the distribution thereof.

(14) To furnish to the federal government, or any of its agencies, such services as may be required in selecting, certifying, or referring persons who may be eligible for Civilian Conservation Corps, or persons who may be eligible for employment by the Works Progress Administration, the Resettlement Administration, the Surplus Commodities Corporation, or any other agency of the federal government engaged in relief or allied activities. The State Board of Public Welfare is also

authorized to certify to the Surplus Commodities Corporation the persons eligible to receive such commodities as may be distributed for relief purposes. The State Board is further authorized to furnish to the federal government or any of its agencies any certification services that may be required or authorized under the Social Security Act, and to accept reimbursement from the federal government for such services.

(15) To establish standards, provide rules and regulations for the operation of, and to inspect and license boarding homes, rest homes, or convalescent homes for persons who are aged or mentally or physically infirm and who are not related or connected by blood or marriage to the applicant for license when a charge is made for such care: Provided said homes care for two or more persons; and provided further that this subdivision shall not apply where said homes care for no more than four persons, all of whom are under the supervision of the United States Veterans Administration. Such license shall be valid for one year from the date of issuance unless revoked earlier by the Board for cause. Such homes shall be under the supervision of the Board, and its agents may at any time visit and inspect the homes. Any individual or corporation who shall operate any such home without having first received such license from the Board shall be guilty of a misdemeanor. Licensing authority shall not apply to any institution established, maintained or operated by any unit of government nor to commercial inns or hotels nor to any facility licensed by the State Board of Health under the provisions of G.S. 130-9 (e).

(16) To make payments out of State moneys appropriated for the purpose and out of federal moneys available under the federal Social Security Act, as amended, to pay the costs of necessary hospitalization in hospitals or health centers duly licensed by the Medical Care Commission of recipients of old age assistance, aid to dependent children, and aid to the permanently and totally disabled, to the extent and in the manner determined from time to time to be feasible by the Board pursuant to rules, regulations and standards established by said Board: Provided, that the rules, regulations and standards established by the Board with respect to necessary hospitalization of recipients of old age assistance, aid to dependent children and aid to the permanently and totally disabled shall be consistent with the principle of obtaining maximum federal participation under the federal Social Security Act, as amended.

(17) To cooperate with the federal Department of Health, Education and Welfare in the administration of acts of Congress relating to child welfare and services related and pursuant thereto and to administer the funds provided by the federal government either as direct grants or as matching funds for child welfare purposes. The provision of federal acts relating to grants-in-aid to the State for child welfare purposes, and the benefits thereunder, are hereby accepted and adopted, and the provisions of this section shall be liberally construed in relation to such federal acts, so that the intent to comply therewith shall be made effectual.

(18) To make payments out of State and federal moneys available for the purpose of paying the costs of necessary day care of minor children of needy families in accordance with rules, regulations and standards established by the State Board of Public Welfare: Provided, that these rules, regulations and standards shall be consistent with the principle of obtaining maximum federal participation in the costs of such day care. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss.

3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C. S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175.)

Cross References.—See Const. Art. XI, § 7. For sections prescribing certain duties and powers of the Board and the Commissioner of Public Welfare, see the following: §§ 48-1 through 48-35 (duties relative to adoption of minors); § 153-9, subd. (38) (approval of establishment and maintenance of county homes for indigent and delinquent children); § 153-154 (reports required from county homes); § 153-166 (approval of facilities and equipment of district hospital homes for aged and infirm); § 35-40 (Commissioner is member of Board of Eugenics); § 15-206 (cooperation with State Probation Commission); § 108-18 (duties in administering Old Age Assistance Act); § 108-57 (duties in administering aid to dependent children); §§ 108-77 through 108-79 (administration of State Boarding Home Fund); §§ 108-80 through 108-86 (regulation of organizations and persons soliciting alms); § 110-29 (commitment of delinquent children to Board by juvenile courts); § 110-30 (approval of matron and superintendent of detention homes for children committed by juvenile courts); § 110-31 (appointment and discharge of probation officers); § 110-33 (reports required of probation officers); § 110-49 (licensing of institutions for the care of children); §§ 110-50 through 110-56 (regulation of placement of children from without State); § 111-3 (Commissioner ex officio member of State Commission for the Blind); § 148-9 (supervision and visitation of State Prisons).

Editor's Note.—The first 1965 amendment added the second proviso at the end of the first sentence in subdivision (15). The second 1965 amendment added subdivision (18).

Cited as to subdivision (15), in In re O'Neal, 243 N.C. 714, 92 S.E.2d 189 (1956).

§ **108-4. Investigation and report on mental and physical infirmities.**—The Board shall also give special attention to the causes of insanity, defect or loss of the several senses, idiocy, and the deformity and infirmity of the physical organization. They shall, besides their own observation, avail themselves of correspondence and exchange of facts of the labors of others in these departments, and thus be able to afford the General Assembly data to guide them in future legislation for the amelioration of the condition of the people, as well as to contribute to enlighten public opinion and direct it to interests so vital to the prosperity of the State. The State Board shall keep and report statistics of the matters hereinbefore referred to and shall compile these reports and analyze them with a view of determining and removing the cause in order to prevent crime and distress. (1868-9, c. 170, s. 4; Code, s. 2334; Rev., s. 3916; 1917, c. 170, s. 1; C. S., s. 5007.)

§ **108-5. Inspection of county prisons; reports required.**—The State Board shall have power to inspect county jails, county homes, and all prisons and prison camps and other institutions of a penal or charitable nature, and to require reports from sheriffs of counties, chiefs of police of cities and towns, and directors of public welfare and other county and municipal officers in regard to the conditions of jails or almshouses, or in regard to the number, sex, age, physical and mental condition, criminal record, occupation, nationality and race of inmates, or such other information as may be required by the State Board. The plans and specifications of all new jails and almshouses shall, before the beginning of the construction thereof, be submitted for approval to the State Board. (1868-9, c. 170, s. 5; Code, s. 2335; Rev., s. 3917; 1917, c. 170, s. 1; C. S., s. 5008; 1957, c. 86; 1961, c. 186.)

§ **108-6. Biennial reports to General Assembly.** — The State Board shall biennially prepare and submit to the General Assembly a complete and full report of its doings during the preceding two years, showing the actual condition of all the State institutions under its supervision, with such suggestions as it may deem necessary and pertinent, and shall report such other matters as it may think for the benefit of the people of the State. (1868-9, c. 170, s. 8; 1870-1, c. 106; Code, c. 2338; Rev., s. 3918; 1917, c. 170, s. 1; C. S., s. 5009; 1955, c. 982.)

§ 108-7. Attention secured for insane and other unfortunates.—Whenever the Board shall have reason to believe that any insane person, not incurable, is deprived of proper remedial treatment, and is confined in any almshouse or other place, whether such insane person is a public charge or otherwise, it shall be the duty of the Board to cause such insane person to be conveyed to the proper State hospital for the insane, there to receive the best medical attention. So, also it shall be their care that all the unfortunate shall receive benefit from the charities of the State. (1868-9, c. 170, s. 6; Code, s. 2336; Rev., s. 3919; 1917, c. 170, s. 1; C. S., s. 5010.)

§ 108-8. Public institutions to furnish information.—The Board may require the superintendents or other officers of the several charitable and penal institutions of the State to report to them any matter relating to the inmates of such institutions, their manner of instruction and treatment, with structure of their buildings, and to furnish them any desired statistics upon demand. (1868-9, c. 170, s. 7; Code, s. 2337; Rev., s. 3920; 1917, c. 170, s. 1; C. S., s. 5011.)

§ 108-9. Relatives ineligible to appointment in State institutions; payments to nursing, etc., homes owned, etc., by welfare or other officials, or their relatives, prohibited. — (a) No person shall be appointed to any place or position in any of the State institutions under the supervision of the State Board who is related by blood or marriage to any member of the State Board or to any of the principal officers, superintendents, or wardens of State institutions.

(b) No payment of any public welfare or public assistance funds derived from any source, federal, State, or local, shall be made for the care of any person in any nursing home or home for the aged or infirm owned or operated in whole, or in part by any of the following individuals:

(1) A member of the State Board of Public Welfare, of any county board of public welfare, or of any board of county commissioners;
(2) Any official or employee of the State Department of Public Welfare or of any county department of public welfare;
(3) A parent, grandparent, child, grandchild, brother or sister of any person designated in subdivisions (1) and (2) of this subsection;
(4) A spouse of any person designated in subdivisions (1) and (2) of this subsection;
(5) A spouse of a parent, child, brother, or sister of any person designated in subdivisions (1) and (2) of this subsection. (1917, c. 170, s. 1; C. S., s. 5012; 1959, c. 715; 1965, c. 48.)

Editor's Note.—The 1965 amendment rewrote subsection (b).

§ 108-10. Failure of officers to furnish information. — If the board of commissioners of any county or the justices of the peace of any township, or any officer or employee of any charitable or penal institution of the State shall fail, refuse, or neglect to furnish any information required by law to be furnished to the State Board of Public Welfare, when they have been provided with the necessary blank forms for such reports, or shall fail upon request to afford proper facilities for the examination of any charitable or penal institution of the State, they shall be guilty of a misdemeanor. (1869-70, c. 154, s. 3; Code, s. 2341; 1891, c. 491, s. 2; Rev., s. 3566; C. S., s. 5013; 1957, c. 100, s. 1.)

§ 108-10.1. Contracts with agencies or private organizations to act as agents of Board. — The State Board of Public Welfare is authorized and empowered to make arrangements and contracts with other State agencies or private organizations, including those governed by chapter 57 of the General Statutes, whereby such agencies or organizations can act as the agent of said State Board of Public Welfare in arranging for the providing of any or all of the services described and authorized by the provisions of chapter 108 of the General Statutes or for agreements with suppliers or for arrangements as to payments of suppliers. (1963, c. 1171.)

ARTICLE 2.

County Boards of Public Welfare.

§ **108-11. County welfare boards; appointment; duties.**—Each of the several counties of the State shall have a county welfare board composed of three members who shall be appointed as follows: The board of county commissioners shall appoint one member who may be one of their own number to serve as ex officio member of the county welfare board with the same powers and duties as the other two members, or they may appoint a person not of their own number to serve on the county welfare board; the State Board of Public Welfare shall appoint one member; and the two members so appointed shall select the third member. In the event the two members thus appointed are unable to agree upon the selection of the third member, such third member shall be appointed by the resident judge of the superior court of the district in which the county is situated.

The board of county commissioners of any county is hereby authorized at any time to increase the size of the county welfare board from three (3) members to five (5) members. The decision to increase the county welfare board shall be reported immediately to the State Board of Public Welfare. In the event that the county welfare board is increased to five (5) members, the said five (5) members shall be appointed as follows: The board of county commissioners shall appoint two (2) members, one or both of whom may be a member or members of the board of county commissioners to serve as ex officio members of the county welfare board with the same powers and duties as the other members, or the commissioners may appoint one or both members to the county welfare board from persons other than their own membership; the State Board of Public Welfare shall appoint two (2) members; and the four (4) members so appointed shall select a fifth member. In the event the four (4) members thus appointed are unable to agree upon the selection of the fifth member, such fifth member shall be appointed by the senior resident superior court judge of the district in which the county is situated.

Appointments of county welfare board members shall be made on or before the first day of July of the year in which the term of appointment expires, and shall be effective as of that date, and the terms of office shall be three years each. Appointments to fill vacancies shall be for the remainder of the term of office. Prior service on a county welfare board shall not disqualify any person for service under this article, but no member shall be eligible to serve more than two successive terms.

In the event that the county welfare board is composed of three (3) members, the term of the member appointed by the State Board of Public Welfare shall expire on June 30, 1963, and triennially thereafter; the term of the member appointed by the county commissioners shall expire on June 30, 1965, and triennially thereafter; and the term of the third member shall expire on June 30, 1964, and triennially thereafter. In the event that the county welfare board is increased to five (5) members, the State Board of Public Welfare shall appoint an additional member for a term expiring simultaneously with the term of the existing member appointed by the county commissioners, and the county commissioners shall appoint an additional member for a term expiring simultaneously with the term of the existing member appointed by the State Board of Public Welfare; thereafter all appointments shall be for three (3) years upon the expiration of the term of any member. It is the intent of this provision relating to five-member boards to provide for the appointment of one (1) member by the board of county commissioners and one (1) member by the State Board of Public Welfare in each year except for every third year, when the fifth member is appointed.

In the event that a board of county commissioners, after having increased the county welfare board to five (5) members, desires to return to a three-member board, it may do so effective on July 1 next following the decision to reduce the size of the board to three (3) members. On the said July 1, the terms of one (1) member appointed by the State Board of Public Welfare and one (1) member appointed by the county commissioners shall thereupon cease. The term of the member appointed by the State Board whose term would have expired on June 30, 1965, or triennially thereafter, shall thereupon cease; and the term of the member appointed by the county commissioners whose term would have expired on June 30, 1966, or triennially thereafter, shall thereupon cease. Thereafter the terms of the three (3) remaining members shall expire as provided in the first sentence of the preceding paragraph.

The county welfare boards of the several counties shall have the duty of selecting the county director of public welfare, shall act in advisory capacity to county and municipal authorities in developing policies and plans in dealing with problems of dependency and delinquency, distribution of the poor funds, and with bettering social conditions generally, including cooperation with other agencies in placing indigent persons in gainful enterprises, shall prepare the administrative budget for the county welfare department for submission to and approval by the board of county commissioners, and shall have such other powers and duties as may be prescribed by law, particularly those set forth in the laws pertaining to old age assistance and aid to dependent children: Provided, that as to cases requiring immediate action to prevent undue hardship the county welfare board may at its discretion delegate to the director of public welfare authority to consider and process applications under these laws, and to determine eligibility for assistance, amount of such assistance; and date on which it shall begin. The board shall require that any action taken by the director pursuant to such delegated authority be fully reported to the board at its next meeting. The board of public welfare of each county shall at its next monthly meeting accept or reject or modify the action of the county director of public welfare made under the preceding proviso since the last monthly meeting of the county board of public welfare. The county welfare board shall meet with the director of public welfare and advise with him in regard to problems pertaining to his office, and the director of public welfare shall be the executive officer of the board and shall act as its secretary.

Two or more county boards of public welfare are hereby authorized to employ jointly a director of public welfare to serve the appointing counties. The appointing counties must agree as to what portion of the total salary of the director is to be paid by each of the counties he serves. All laws referring to county directors of public welfare shall be applicable to a county director of public welfare appointed to serve two or more counties.

Any member of a county board of public welfare is authorized to inspect and examine any papers, documents, data, case histories, clinical data, medical reports, or any records whatsoever on file in the office of the county director of public welfare, or in the custody of any case worker or agent or employee engaged in any service under any said county director of public welfare, which pertain in any manner to any applicant or applications for public assistance of any type or nature, as authorized by chapter 108 of the General Statutes, as amended. No member of a county board of public welfare shall disclose to anyone or make public any information acquired by him by virtue of such inspection of said records. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5014; 1937, c. 319, s. 3; 1941, c. 270, s. 2;

1945, c. 47; 1953, c. 132; 1955, c. 249; 1957, c. 100, s. 1; 1959, c. 1255, s. 1; 1961, c. 186; 1963, c. 139; c. 247, ss. 1, 2.)

Local Modification.—Alexander, Cabarrus, Chatham, Columbus, Gaston: 1957, c. 1157; 1963, c. 247, s. 2½; Guilford: 1955, c. 312; Mitchell: 1963, c. 1031; Pender: 1963, c. 247, s. 2½; Stokes: 1963, c. 835; Watauga: 1963, c. 247, s. 2½; Wilkes: 1939, c. 106.

Editor's Note.—The first 1963 amendment inserted the seventh paragraph. The second 1963 amendment inserted new paragraph two and paragraphs four and five in lieu of former paragraph three.

Session Laws 1959, c. 1255, which added the last paragraph, provides: "If the provisions of this act are held by the Attorney General of the State of North Carolina to be in conflict with the federal statutes relating to disclosure of information (42 USCA 302; 42 USCA 602; 42 USCA 1352;) this act shall be null and void."

The term "ex officio" is not used in this section in its technical sense. State ex rel. Pitts v. Williams, 260 N.C. 168, 132 S.E.2d 329 (1963).

What the General Assembly intended by the use of the term "ex officio" in this section is unclear. It may have been apprehensive as to the dual office holding provision of Art. XIV, § 7, of the Constitution of North Carolina. It may have intended to make plain that a county commissioner, when appointed and while serving as a member of the county welfare board, was not entitled to additional compensation for such service. State ex rel. Pitts v. Williams, 260 N.C. 168, 132 S.E.2d 329 (1963).

A board of county commissioners is not required to appoint one of their own number to the county welfare board under this section, but by authorizing it to do so any question as to the legality of such appointment is removed. State ex rel. Pitts v. Williams, 260 N.C. 168, 132 S.E.2d 329 (1963).

Purpose of Provision that Term of One Member Shall Expire Each Year.—The obvious purpose of this section in providing that the term of one of the members shall expire each year is to give assurance there will always be at least two members of the county welfare board with prior knowledge and understanding of the board's functions, program and problems. State ex rel. Pitts v. Williams, 260 N.C. 168, 132 S.E.2d 329 (1963).

The expiration of the term of office of a county commissioner does not disqualify him from further service as a member of the county welfare board or create a vacancy in the board to which he had been appointed. State ex rel. Pitts v. Williams, 260 N.C. 168, 132 S.E.2d 329 (1963).

§ 108-12. Meetings of the board; compensation and expenses.—The county welfare boards so appointed shall meet immediately after their appointment and organize by electing a chairman, who shall serve for the term of his appointment, and shall forward notice of said chairman's election and the third member's appointment immediately to the State Board, and shall meet at least once a month with the director of welfare and advise with him in regard to problems pertaining to his office. Members of county boards of public welfare may at the discretion of the board of county commissioners receive a per diem not to exceed ten dollars ($10.00) a day and actual expenses when attending official meetings; any such payments heretofore made are hereby validated. (1917, c. 170, s. 1; 1919, c. 46, s. 4; C. S., s. 5015; 1937, c. 319, s. 4; 1941, c. 270, s. 3; 1947, c. 92; 1959, c. 320; 1961, c. 186.)

Local Modification. — Gaston: 1951, c. 694; Jackson: 1959, c. 142; Mecklenburg: 1941, c. 270, s. 3.

§ 108-12.1. Change of name in statutes and regulations relating to board.—Wherever in the General Statutes of North Carolina, or in any session law, public, public-local, private or special act of the General Assembly, or in any rule or regulation, a duty or obligation is imposed upon a county welfare board or upon a county board of public welfare, or any authority, privilege or power is granted thereto, the same shall be construed as referring to the county board of public welfare which shall henceforth be the designation of any of said county welfare boards or county boards of public welfare. (1945, c. 43, s. 3; 1957, c. 100, s. 2.)

§ 108-13. County director of welfare; appointment; salary.—On the first Monday in June, one thousand nine hundred and forty-one, or as soon thereafter as practical, the several county welfare boards shall appoint a director of public welfare for the county in accordance with the rules and regulations of the merit system plan adopted by the State Board of Public Welfare. In making such appointment the county board may reappoint the director of public welfare whose term expires on the thirtieth day of June one thousand nine hundred and forty-one and who was serving as director of public welfare prior to the first day of January one thousand nine hundred and forty, if such person is certified by the merit system supervisor as having passed the merit system examination on a qualifying basis; or the county board may appoint as director of public welfare any person who was employed by a county welfare department prior to the first day of January one thousand nine hundred and forty and who has been promoted to the duties and responsibilities of director if such person meets the minimum requirements of the position of director of public welfare and shall be certified by the merit system supervisor as having passed the merit system examination; or the county board may appoint as director of public welfare a person from an open competitive or promotional register as certified by the merit system supervisor. The director so appointed shall assume his duties on the first day of July, one thousand nine hundred and forty-one. All subsequent vacancies in the position of director of public welfare shall be filled by the county board from an open competitive or promotional register.

The county welfare board may dismiss a director of public welfare in accordance with the merit system rules of the State Board of Public Welfare and any director so dismissed shall have the right of appeal to the merit system council, as provided for in the merit system plan.

The county welfare board shall determine the salary to be paid the director of public welfare, in accordance with the merit system compensation plan, either at the time of his appointment or at such time as they may be in regular or called session for the purpose, and the salary shall be paid by the respective counties from federal, State and county funds: Provided, that in counties where financial conditions render it urgently necessary, the State Board may cause to be paid out of any State or federal fund available for the purpose, such portion of the salary of the director of welfare of any county as, in the discretion of the State Board, may be necessary. Levy of taxes for the special purpose of payment of the salary of the county welfare director is hereby authorized and directed. (1917, c. 170, s. 1; 1919, c. 46, ss. 3, 4; C. S., s. 5016; 1921, c. 128; 1929, c. 291, s. 1; 1931, c. 423; 1937, c. 319, s. 5; 1941, c. 270, s. 4; 1957, c. 100, s. 1; 1961, c. 186.)

Local Modification.—Mecklenburg: 1941, c. 270, s. 4.

Cross Reference.—As to State personnel system, see § 126-1 et seq.

§ 108-14. Powers and duties of county welfare director.—The county director of public welfare shall have the following powers and duties:

(1) To act as executive officer of county welfare board and to appoint office personnel in accordance with merit system regulations of the State Board of Public Welfare, whose salaries shall be paid by the county from federal, State and county funds: Provided, that in counties where financial conditions render it urgently necessary, the State Board may cause to be paid out of any State and federal funds available for the purpose such portion of the salaries as, in the discretion of the State Board may be necessary.

(2) To administer old age assistance and aid to dependent children under the supervision of the State Board of Public Welfare and in accordance with the provisions of the Old Age Assistance and Aid to Dependent Children Acts.

(3) To have the care and supervision of indigent persons in the county and

to administer funds provided by the county commissioners for such purposes.

(4) To act as agent for the State Board of Public Welfare in relation to any work to be done by the State Board in the county; and to make, under the direction of the State Board, such investigations in the county in the interest of social welfare as the State Board may desire or direct.

(5) To issue employment certificates to children in such form and under such regulations as may be prescribed by the State Department of Labor.

(6) To prepare and submit to the Eugenics Board of North Carolina petitions for sterilization of county institutional and noninstitutional cases and to arrange for operations authorized by the Eugenics Board.

(7) To serve as investigating officer and chief probation officer for all juvenile courts in the county and to have oversight of dependent and delinquent children including those on parole or probation, of such dependent children as may be placed in the county by the State Board, and of those children conditionally released from State institutions for juvenile delinquents.

(8) To assist and cooperate with the Commissioner of Paroles and the Parole Supervisor in the oversight and actual supervision of persons on parole in the county and to cooperate with the Probation Commission and its representatives.

(9) Under direction of the State Board to look after and keep up with the condition of persons discharged from hospitals for the insane.

(10) To investigate cases for adoption and supervise placements for adoption.

(11) To supervise boarding homes under rules and regulations of the State Board.

(12) To cooperate with existing agencies in the promotion of wholesome recreation facilities in the county. (1917, c. 170, s. 1; 1919, c. 46, s. 3; C. S., s. 5017; 1941, c. 270, s. 5; 1957, c. 100, s. 1; 1961, c. 186.)

Cross Reference.—As to delegated authority of county welfare director in emergency cases, see § 108-11.

Quoted in In re Custody of Simpson, 262 N.C. 206, 136 S.E.2d 647 (1964).

§ 108-14.01. Special county attorneys for welfare matters; appointment or designation of another to perform duties; compensation and expenses.—The board of county commissioners of any county, with the approval of the county board of public welfare, may appoint a duly qualified and licensed attorney who shall serve as a special county attorney for the purposes of §§ 108-14.01 to 108-14.03. In lieu of appointing a special county attorney the board of county commissioners may designate the county attorney, the assistant district solicitor or the solicitor of any court in the county inferior to the superior court as special county attorney and provide for him additional compensation for the performance of the duties imposed upon him as special county attorney. Such special county attorney shall serve as legal advisor to the county director of public welfare, the county board of public welfare and the board of county commissioners in public welfare matters, and provision for his compensation and other expenses may be made in the special tax levy for county welfare administration. Nothing in §§ 108-14.01 to 108-14.03 shall be construed as prohibiting any system or plan by which any county in the State may already have made specific arrangements for specialized legal services in the nature herein prescribed, or the authority of any county government to retain and compensate special legal counsel for the purposes of discharging all or some of the duties and responsibilities herein set forth, or to impair the validity of the expenditure of public funds for specialized legal services. (1959, c. 1124, s. 1; 1961, c. 186.)

§ 108-14.02. Duties of special county attorneys.—The special county attorney shall have the following duties:

(1) He may represent the county, the plaintiff or the obligee in all proceedings brought under the Uniform Reciprocal Enforcement of Support Act and as a part of such representation shall exercise continuous supervision of compliance with any order entered in any proceeding under said act.

(2) By direction of the board of county commissioners and by and with the consent and approval of the county attorney, the special county attorney may be assigned and may discharge all of the duties of the county attorney in respect to the old age assistance lien.

(3) He shall be authorized to appear as special prosecution on behalf of the State and to make all necessary investigation preliminary thereto in connection with the preparation and prosecution of criminal cases under article 40 of chapter 14 of the General Statutes, entitled "Protection of the Family."

(4) He shall be authorized to investigate, institute, prepare and prosecute as special prosecution, in cooperation with the solicitor of any court of record, all proceedings authorized under chapter 49 of the General Statutes, entitled "Bastardy."

(5) He shall perform such other duties as may be assigned him by the board of county commissioners. (1959, c. 1124, s. 2.)

§ 108-14.03. Boards of welfare to assist and furnish information to special attorneys.—In performing any of the duties set forth in § 108-14.02, the special county attorney is authorized to call upon any county board of public welfare or the State Board of Public Welfare for such information as is necessary for the performance of such duties; and such boards are hereby directed to assist special county attorneys in the performance of their duties and to furnish necessary information. (1959, c. 1124, s. 3.)

ARTICLE 2A.

Records of Persons Receiving Public Assistance.

§ 108-14.1. County board to file list of persons receiving assistance.—It shall be the duty of each county board of public welfare to file in the office of the auditor of its county, the same being the county in which said board performs its duties and functions, on or before the 30th day of January and July of each year a complete list showing the names, addresses, and amounts of monthly grants of all persons receiving through such county any payments for old age assistance, aid to dependent children, or aid to the permanently and totally disabled, or persons receiving public assistance of any nature under any welfare or public assistance program administered by the welfare department. Provided that the term auditor as used in this article shall be construed to mean any officer charged with the keeping of the fiscal records of said county. (1953, c. 882, s. 1.)

§ 108-14.2. Lists open to public; records as to adoption; names of children, etc., not disclosed; data as to employees of board to be on file.—The said lists showing the names, addresses and amounts of public assistance paid to each individual, as required by § 108-14.1, shall be filed with the county auditor and shall be preserved by said auditor, and such report or reports, when so filed, are hereby declared to be public records and shall be open to public inspection at all times during the regular office hours of said auditor; provided, however, that nothing herein contained shall be construed to authorize or require the disclosure of any records of the public welfare department, either State or county, pertaining to adoptions or pertaining to children heretofore or hereafter placed in foster homes for adoption or other purposes. Nothing contained in this article shall be construed to authorize or require the disclosure of the names of individual children receiving aid to dependent children or any other financial services. Information with respect to any such services shall be made available in the name of a parent or the responsible adult and not in the name of the individual child. The names of and the salaries paid to all employees of the county board of public welfare, whether such salaries are paid by county funds, State funds, or both such funds, shall be on file in the office of the county auditor and are hereby declared to be public records in the same manner and to the same extent as in the case of all other employees of the county. (1953, c. 882, s. 2.)

§ **108-14.3. List filed only in county where board functions.** — Nothing contained in this article shall be construed to require any county board of public welfare to file any list required by this article with any county auditor, other than in the county where such county board of public welfare performs its duties and functions. (1953, c. 882, s. 3.)

§ **108-14.4. Unlawful uses of information disclosed; unlawful to fail to file list.**—Except as provided in this article, it shall be unlawful for any person, firm or corporation, board, body, association or other agency of any kind whatsoever to solicit, disclose, receive, make use of or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list or lists of names or any list of names derived from the reports provided for by this article for commercial or political purposes of any nature, or for any purpose not directly connected with the administration of public assistance, and any person, firm, corporation, board, body or association violating any provision of this article prohibiting the use of the information appearing in the reports required by this article for commercial or political purposes, even though such information was at first legally obtained or disclosed under this article, shall be guilty of a misdemeanor. It shall be unlawful for any director of any county board of public welfare or any officer or agent of same to fail or refuse to file the lists required by this article. (1953, c. 882, s. 4; 1961, c. 186.)

§ **108-14.5. Only names, addresses and amounts to be disclosed; authority of State Board not limited.**—Nothing contained in this article shall require data on liens or property reserves to be filed in said reports, nor shall any case record, papers, documents or data be disclosed except so much as may be necessary to show the names, addresses and amounts paid to recipients or beneficiaries as required by § 108-14.1. No provision of this article shall be construed as repealing or limiting the authority of the State Board of Public Welfare to establish and enforce rules and regulations to protect case records other than the reports required under this article and as permitted by § 618 of the Revenue Act of 1951 as enacted by the Congress of the United States. (1953, c. 882, s. 4½.)

Article 3.

Division of Public Assistance.

§ **108-15. Division of Public Assistance created.**—There is hereby created in the State Board of Public Welfare a Division of Public Assistance, including (i) assistance to aged needy persons, (ii) aid to dependent children, and (iii) general assistance to other needy persons, as administered under authority of this article. (1937, c. 288, s. 1; 1949, c. 1038, s. 1; 1957, c. 100, s. 1.)

§ **108-16:** Repealed by Session Laws 1963, c. 138.

Part 1. Old Age Assistance.

§ **108-17. Short title.** — This part may be cited as the "Old Age Assistance Act." (1937, c. 288, s. 30.)

Cross Reference.—As to special county attorneys and their duties with respect to old age assistance, see §§ 108-14.01 to 108-14.03.

Cited in Atlantic Coast Line Ry. v. Beaufort County, 224 N.C. 115, 29 S.E.2d 201 (1944); Atlantic Coast Line Ry. v. Duplin County, 226 N.C.. 719, 40 S.E.2d 371 (1946).

§ **108-18. Establishment of relief.**—The care and relief of aged persons who are in need and who are unable to provide for themselves is a legitimate obligation of government which cannot be ignored or avoided without injustice to such persons and serious detriment to the purposes of organized society. Such care and relief is hereby declared to be a matter of State concern and necessary to promote the public health and welfare. In order to provide such care and relief at public expense, to the extent that the same may be proper, with due regard to the revenues which the State may equitably enjoy, and with due regard for other necessary objects of public expenditure, a state-wide system of old age relief is hereby established, to operate uniformly throughout the State and in every county thereof, and with due regard to the varying living conditions and the financial, physical, and other conditions of the recipient of such relief, more particularly dealt with in this article. The provisions of this article are mandatory on the State, and each and every county thereof, and, whenever the levy of any tax is required or directed herein, it shall be understood that the said tax is levied for a special purpose; and full authority is hereby given to the boards of county commissioners of the several counties to levy, impose, and collect the taxes herein required for the special purpose of old age assistance, as defined and provided for in this article. (1937, c. 288, s. 3.)

Editor's Note. — For article discussing social security, see 15 N.C.L. Rev. 369.

§ **108-19. Definitions.**—As used in this article,

(1) "Applicant" shall mean any person who has applied for relief under this part.

(2) "Assistance" as used under this part means the money payments to needy aged persons or payments for medical care in behalf of needy aged individuals.

(3) "The county board of welfare" shall mean the county board of public welfare of each of the several counties, as now established by law, subject to such modification as may be made by law.

(4) "Deputies" and "supervisors" shall mean such persons as may be designated and appointed by the State Board to exercise its power and duty of supervision under this article.

(5) "Recipient" shall mean any person who has received assistance under the provisions of this part.

(6) "Social Security Board" shall be interpreted to include any agency or agencies of the federal government which may be substituted therefor by law.

(7) "State Board" shall mean the State Board of Public Welfare, established by this chapter. (1937, c. 288, s. 4; 1939, c. 395, s. 1; 1951, c. 1098, s. 3; 1957, c. 100, ss. 1, 2.)

§ **108-20. Acceptance of federal grants.**—The provisions of the federal Social Security Act, relating to grants-in-aid to the State for old age assistance and the benefits thereunder, are hereby accepted and adopted, and the provisions of this article shall be liberally construed in relation to the said federal Social Security Act, so that the intent to comply therewith shall be made effectual. (1937, c. 288, s. 5.)

Stated in State Bd. of Pub. Welfare v. Board of Comm'rs, 262 N.C. 475, 137 S.E.2d 801 (1964).

§ **108-21. Eligibility.**—Assistance shall be granted under this article to any person who:

(1) Is sixty-five years of age and over;
(2) Has not sufficient income, or other resources, to provide a reasonable subsistence compatible with decency and health;
(3) Is not an inmate of any public institution at the time of receiving assistance. An inmate of such institution may, however, make application for such assistance, but the assistance, if allowed, shall not begin until after he ceases to be an inmate.
(4) Has been a resident of this State for one year immediately preceding the date of his application.

Eligibility of applicants to receive benefits under this part, and the amount of assistance given, and such other conditions of awards as it may be necessary to determine shall be determined in the manner hereinafter set out.

The amount of assistance which any person shall receive shall be determined with due regard to the resources and necessary expenditures of the individual and the conditions existing in each case, and in accordance with the rules and regulations made by the State Board; and shall be sufficient when added to all other income and support of recipients to provide such person with a reasonable subsistence compatible with decency and health, but not exceeding forty dollars ($40.00) per month or four hundred eighty dollars ($480.00) during one year; and of this not more than twenty dollars ($20.00) per month nor more than two hundred forty dollars ($240.00) in one year shall be paid out of State and county funds.

Within the limitations of the State appropriation the maximum payment for old age assistance may be increased not in excess of the amount which may hereafter be matched by the federal government. (1937, c. 288, s. 6; 1939, c. 395, s. 1; 1941, c. 232; 1943, c. 753, s. 1; 1945, c. 615, ss. 1, 2; 1947, c. 91, s. 1.)

§ **108-22. State Old Age Assistance Fund.**—A fund shall be created to be known as "The State Old Age Assistance Fund." This Fund shall be created by appropriations made by the State from its ordinary revenues and such grants as may be made for old age assistance under the federal Social Security Act. Said Fund shall be used exclusively for the relief of aged persons coming within the eligibility provisions of this part and the cost of administration of the same. The appropriations to be made by the State for such purpose shall be supplemented by the amount provided under the federal Social Security Act for old age assistance and such further amount as the State may appropriate for the administration of this article. From said Fund there shall be paid as hereinafter provided three fourths of the benefit payments to aged person in accordance with the provisions hereof, and the other one fourth of said payments shall, subject to the provisions of § 108-73, be provided by the several counties of the State as hereinafter required.

In the event that the federal Social Security Act is amended providing for a larger percentage of contributions to said Fund, the provisions of this section shall be construed to accept such additional grants, and the percentages to be provided for old age assistance by the State and counties shall be adjusted proportionately. (1937, c. 288, s. 7; 1943, c. 505, s. 1; 1947, c. 91, s. 2.)

Cited in Atlantic Coast Line Ry. v. Duplin County, 226 N.C. 719, 40 S.E.2d 371 (1946).

§ **108-23. State appropriation.**—At its present session, and biennially thereafter, the General Assembly shall appropriate out of its ordinary revenues, for the use of such Fund, such amount as shall be reasonably necessary to carry out the provisions of this article, and provide relief to the aged persons coming within the eligibility provisions herein set out, to such an extent as may be proper upon due consideration of the ability of the State to produce sufficient revenues, and with due regard to other necessary objects of public expenditure. (1937, c. 288, s. 8.)

Stated in State Bd. of Pub. Welfare v. Board of Comm'rs, 262 N.C. 475, 137 S.E.2d 801 (1964).

§ **108-24. County fund.**—Annually, at the time other taxes are levied in each of the several counties of the State, there shall be levied and imposed a tax sufficient to raise such an amount as shall be found necessary, in the manner hereinafter provided, to supplement the State and federal funds available for expenditure in said county for old age assistance. The amount so ascertained shall be an obligation of the county, and the taxes imposed shall be collectible as other taxes. (1937, c. 288, s. 9.)

The General Assembly has the power to impose the duty upon the counties to raise a part of the matching funds for Social Security payments. State Bd. of Pub. Welfare v. Board of Comm'rs, 262 N.C. 475, 137 S.E.2d 801 (1964).

And County Is Not Relieved of Burden because Some Citizens Reside on Tax-Exempt Property. — The mere fact that some citizens of a county who receive payments from the welfare funds reside on property which is exempt from taxation does not relieve the county from the burden of matching federal funds imposed on it by the legislature. State Bd. of Pub. Welfare v. Board of Comm'rs, 262 N.C. 475, 137 S.E.2d 801 (1964).

County Which Consists Largely of Indian Reservation.—The fact that a large part of a county consists of an Indian reservation owned by the United States and exempt from taxation does not affect the duty of the county to pay its part of the matching funds for Social Security payments to Indians residing within its boundaries, there being no statutory provision impairing the rights of the Indians to benefits under the Social Security Act as implemented by statute in this State. State Bd. of Pub. Welfare v. Board of Comm'rs, 262 N.C. 475, 137 S.E.2d 801 (1964).

§ **108-25. Appropriations not to lapse.**—No appropriation made for the purposes of this article shall lapse or revert; but the unexpended balances may be considered in the making of further appropriations. Any proceeds of county taxation for the purposes of this article remaining unexpended shall be taken into account in determining the amount to be raised by taxation during the ensuing year, but shall not be used for any purpose not authorized by this article: Provided, that if at any time during any fiscal year it appears to be necessary and feasible, the county may transfer with the approval of the State Board of Allotments and Appeal a portion of the amount raised by the county for old age assistance to the county aid to dependent children fund. (1937, c. 288, s. 10; 1945, c. 615, s. 1.)

§ **108-26. Custody and receipt of funds.**—The Treasurer of the State of North Carolina is hereby made ex officio treasurer of the State Old Age Assistance Fund herein established, including therein such grants-in-aid for old age assistance as may be received from the federal government for administration and distribution in this State; and the said Treasurer is hereby designated as the proper officer to receive grants-in-aid from the federal government. The Treasurer shall keep the funds in a separate account, to be known as the "State Old Age Assistance Fund," and shall be responsible therefor on his official bond; and the said funds shall be protected by proper depository security as other State funds. The said Fund shall be drawn upon and disbursed as hereinafter provided. (1937, c. 288, s. 11.)

§ **108-27. Department of Public Welfare.**—The powers and duties of the State Board of Public Welfare, established under Article XI, section seven, of the Constitution of North Carolina, and this chapter, and of the office of Commissioner of Welfare established thereunder, are not hereby abridged. The powers and duties herein given shall be in addition to those heretofore exercised under existing law; and the State Board of Public Welfare, through the Commissioner of Welfare as the executive head of the Department, is hereby empowered to organize the Department into such bureaus and divisions as may be deemed advisable, not inconsistent with the provisions of this article, in order that the work of the entire Department shall be coordinated on an efficiency basis and duplication of effort may be avoided. (1937, c. 288, s. 12; 1957, c. 100, s. 1.)

§ **108-28. Certain powers and duties of State Board of Public Welfare.**—The State Board shall:

(1) Supervise the administration of assistance to the needy aged under this article by the county boards;

(2) Make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this article. All rules and regulations made by the State Board shall be binding on the counties and shall be complied with by the respective boards of county commissioners and county boards of welfare;

(3) Prescribe the form of and print and supply to the county boards and agencies such forms as it may deem necessary and advisable;

(4) Cooperate with the federal government in matters of mutual concern pertaining to assistance to the needy aged, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance;

(5) Make such reports, in such form and containing such information, as the federal government may from time to time require, and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports;

(6) Publish reports as may be necessary;

(7) Enter into reciprocal agreements with public welfare agencies in other states relative to providing for assistance and services to residents, nonresidents or transients, and cooperate with other agencies of the State and federal governments in providing such assistance and services and in the study of the problems involved;

(8) The State Board is hereby authorized and empowered to receive grants-in-aid from the federal government or any State or federal agency for general relief or for any other relief purposes; and all such grants so made and received shall be paid to the State Treasurer and credited to the account of the North Carolina State Board of Public Welfare, to be used in carrying out the provisions of this article. (1937, c. 288, s. 13; 1939, c. 395, s. 1; 1943, c. 505, s. 2; 1957, c. 100, s. 1.)

§ **108-29. Certain powers and duties of local boards; county welfare boards.**—The county boards of welfare shall perform the duties herein required of them with relation to the administration of this article in the several counties, under the supervision and direction of the State Board, and in accordance with the rules and regulations prescribed by said State Board.

The county boards of welfare shall:

(1) Report to the State Board at such times and in such manner and form as the State Board may from time to time direct;

(2) Submit to the State Board the information required in this article pre-

liminary to determination of the county's quota of funds and the determination of the amount required to be raised by taxation, together with its estimate and supporting data, setting forth the amount of money needed to carry out the provisions of this article; also submit to the board of county commissioners a duplicate of the estimate and supporting data furnished by it to the State Board. Make and report to the State Board and to the county board of commissioners such investigation as may be required in order that said State Board and boards of county commissioners may be fully informed as to the assistance required by aged persons coming within the eligibility provisions of this article, and may have such other information as may be required for proper determination upon any matter coming before the said boards;

(3) Perform any other duties required of them under this article or by proper rules and regulations made by the State Board under authority thereof. (1937, c. 288, s. 14.)

§ **108-30. Application for assistance; determination thereon.**—Applications for assistance under this article shall be made to the county welfare board of the county in which the applicant resides. Such application shall be in writing and in duplicate, in compliance with the rules and regulations established by the State Board, which is required to furnish forms for such applications. Where the applicant is unable to present his application in writing by reason of illiteracy or other cause, the application shall be reduced to writing and filed in duplicate, on such forms as may be supplied by the State Board, or substantially in agreement therewith. The county board of welfare, and the county welfare officer, shall render to applicants for assistance under this article such aid and assistance in the preparation of applications as may be necessary. The application shall contain a statement of the amount of property, both real and personal, in which the applicant has an interest, and of all income which he may have at the time of filing the application, and shall contain such other information as may be required by the rules and regulations of the State Board. One copy of the application shall be forwarded to the State Board.

Whenever a county board of welfare receives an application for assistance under this article, an investigation and record shall promptly be made of the circumstances of the applicant, in order to ascertain the facts supporting the application, and in order to obtain such other information as may be required by the rules of the State Board. In the making of such investigation, the county welfare board and the county welfare officer shall make diligent investigation and record promptly all the information which it is reasonably possible to obtain with respect to such application.

Upon the completion of the investigation, the county board of welfare shall, upon due consideration, determine whether the applicant is eligible for assistance under the provisions of this article, and shall determine the amount of such assistance and the date on which it shall begin, but such award shall in no case exceed forty dollars ($40.00) per month or four hundred eighty dollars ($480.00) in one year, and there shall not be paid thereupon out of State and county funds more than twenty dollars ($20.00) per month or more than two hundred forty dollars ($240.00) in one year. Such award so made when effective shall thereafter be paid in advance monthly to the applicant, disbursement being made in the same manner and under the same procedure as in case of other county funds: Provided, that, when it appears to the county board of public welfare that the interest of the recipient of such award will be better served by smaller payments at more frequent intervals, such award shall be paid in two or more equal installments in each month. Within the limitations of the State appropriation the maximum payment for old age assistance may be increased not in excess of the amount which may hereafter be matched by the federal government.

The county board of welfare shall promptly notify by mail each applicant of its action disallowing the application for granting assistance, stating, in case award is made, the amount of the award and when assistance shall be paid. A copy of such notice shall be immediately forwarded to the board of county commissioners and a duplicate copy forwarded to the State Board of Allotments and Appeal. The State Board is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications relating to applicants and recipients. It shall be unlawful, except for purposes directly connected with the administration of old age assistance and in accordance with the rules and regulations of the State Board for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving old age assistance, directly or indirectly derived from the records, papers, files, or communications of the State Board or the county welfare board or acquired in the course of the performance of official duties. (1937, c. 288, s. 15; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1947, c. 91, s. 3; 1953, c. 675, s. 12; 1959, c. 179, s. 1.)

§ **108-30.1. Lien on real property.**—There is hereby created a general lien, enforceable as hereinafter provided, upon the real property of any person who is receiving or who has received old age assistance, to the extent of the total amount of such assistance paid to such recipient from and after October 1, 1951. Before any application for old age assistance is approved under the provisions of this article, the applicant shall agree that all such assistance paid to him shall constitute a claim against him and against his estate, enforceable according to law by any county paying all or part of such assistance. Such agreement may be contained in the application signed by the applicant. Immediately after the approval of an old age assistance grant, a statement showing the name of the recipient and the date of approval of the application shall be filed in the office of the clerk of the superior court in the county of residence of the recipient and in each county in which such recipient then owns or later acquires real property. The statement shall be filed in the regular lien docket, showing the name of the county filing said statement as claimant, or lienor, and the name of the recipient as owner, or lienee, and same shall be indexed in the name of the lienee in the defendants', or reverse alphabetical, side of the cross index to civil judgments; in said index the county shall appear as plaintiff, or lienor; no cross index in the name of the county, or lienor, shall be required. From the time of filing, such statement shall be and constitute due notice of a lien against the real property then owned or thereafter acquired by the recipient and lying in such county to the extent of the total amount of old age assistance paid to such recipient from and after October 1, 1951. The lien thus established shall take priority over all other liens subsequently acquired and shall continue from the date of filing until satisfied: Provided, that no action to enforce such lien may be brought more than ten years from the last day for which assistance is paid nor more than three years after the death of any recipient and the failure to bring such action within said time shall be a complete bar against any recovery and shall extinguish the lien: Provided further, that no execution in enforcement of the lien shall be levied upon any real property, so long as such property is occupied as a homesite by the surviving spouse or by any minor dependent child of such recipient, or as a homesite by the recipient, or a dependent adult child of such recipient who is incapable of self-support because of total mental or physical disability: Provided, further, that the board of county commissioners and the county board of public welfare of the county in which the recipient resides, acting jointly and after investigation, shall have the authority to subordinate any lien created by this section to a mortgage or lien created against the property of such recipient for the necessary repairs or improvements on said property, whether title to said property is held by the recipient alone or by the entirety with his or her spouse.

The State Board of Public Welfare shall furnish to the county director of public welfare forms to be used which shall contain such information as is required to carry out the provisions of this section and such other information as may be prescribed by the said Board.

Each county department of public welfare shall notify all persons shown of record to be recipients of old age assistance as of the date of notice that all old age assistance grants paid from and after October 1, 1951, shall constitute a lien against the real property and a claim against the estate of each recipient. The notice may be given by letter mailed to the last known address of each recipient, but failure to give such notice shall not affect the validity of the lien.

Upon receipt of a statement signed by the director of public welfare, setting forth the total amount of old age assistance paid to a recipient from and after October 1, 1951, the clerk of the superior court may, after reasonable notice to the county attorney within the same calendar month in which said statement was executed, accept payment of the total sum set forth in said statement, tendered by said recipient or in his behalf, and cancel the lien of record. The clerk of the superior court shall, within the same calendar month, give the director of public welfare notice of the receipt of such payment and of the cancellation of the lien, and shall hold or disburse the funds so received as provided by law. (1951, c. 1019, s. 1; 1953, c. 260; 1955, c. 237, s. 1; 1957, c. 1107; 1961, cc. 186, 967.)

This article provides two separate and distinct methods by which a county may recover the aggregate amount paid as old age assistance to a recipient: One, a claim against the personalty of the estate, and the other a general lien upon the recipient's real estate, attaching upon the filing of the statement therefor in the lien docket and its proper indexing. Lenoir County v. Outlaw, 241 N.C. 97, 84 S.E.2d 330 (1954).

Section to Be Construed in Pari Materia with §§ 2-42 and 161-22.—The recording and indexing requirements of this section are less specific than those relating to deeds and judgments. They should be construed in pari materia with the recording and indexing provisions of §§ 2-42 and 161-22. Cuthrell v. Camden County, 254 N.C. 181, 118 S.E.2d 601 (1961).

No old age assistance lien docket is contemplated or provided for. Not only is there no provision for an old age assistance docket, but this section positively requires that such claims be filed in the regular lien docket. It is patent, therefore, that liens for old age assistance and for building materials and labor must be filed in the same book—the lien docket. Saunders v. Woodhouse, 243 N.C. 608, 91 S.E.2d 701 (1956).

Duration of Lien.—As to duration of lien under former law, see Lenoir County v. Outlaw, 241 N.C. 97, 84 S.E.2d 330 (1954).

§ 108-30.2. Action to be taken upon termination of assistance.—The county department of public welfare shall, within six months after the termination of an old age assistance grant by reason of death or otherwise, examine the case record of such recipient, the tax records of the county, and, in case of termination because of death, the records relating to executors, administrators, collectors, or other personal representatives. If it appears from this examination or from any other information which has come to the attention of the department, (i) that such recipient does not own, or has not owned since the date of the filing of the old age assistance lien against such recipient's realty, any real property, and (ii) that such recipient does not own nor his estate consist of any personal property in excess of one hundred dollars ($100.00), and (iii) in the case of termination because of death, that no executor, administrator, collector or other personal representative has been appointed, an entry shall be made in the case record reflecting the results of this examination. If it appears from this examination, from a subsequent examination, or from any other information which may come to the attention of the department, (i) that such recipient does own, or has owned since the date of the filing of the old age assistance lien against such recipient's realty, any property, or (ii) that such recipient does own or his estate consists of personal property of a value in excess of one hundred dollars ($100.00), or (iii) in case of termination by death, that an executor, administrator, collector, or other personal representative has been appointed, then the department shall furnish to the county attorney all available information concerning the property of the recipient, the name of the spouse of the recipient, the township in which the recipient resides or resided, the race of the recipient, the total amount of old age assistance received by the recipient from and after October 1, 1951, by or through the State and the several counties thereof, and the reason for termination of the old age assistance grant. Upon receipt of this information, the county attorney shall take such steps as he may determine to be necessary to enforce the claim or lien herein provided. If it be made to appear to the clerk of the superior court that the personal property of the estate of a deceased recipient of old age assistance does not exceed one hundred dollars ($100.00) in value, a personal representative of such deceased recipient shall not be a necessary party to an action to enforce the old age assistance lien against such recipient's realty. Any funds remaining after satisfaction of such lien shall be paid into the office of the clerk of the superior court.

The claim against the estate of a recipient herein provided for shall have equal priority in order of payment with the sixth class under § 28-105 of the General Statutes: Provided, that no such claims shall be satisfied out of any real property in which the recipient had any legal or equitable interest so long as such property is occupied as a homesite by the recipient, the surviving spouse, any minor dependent child of such recipient, or by a dependent adult child of such recipient who is incapable of self-support because of total mental or physical disability. (1951, c. 1019, s. 1; 1955, c. 237, s. 2; 1957, c. 1273.)

Cross Reference.—See note to § 108-30.1.

§ **108-30.3. Funds recovered.**—The United States and the State of North Carolina shall be entitled to share in any sum collected under the provisions of this article, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient. The county enforcing the claim as herein provided and any other county within the State which has paid old age assistance to such recipient shall share proratably in any sum collected. All sums collected shall be deposited in the county old age assistance fund and a report of such deposit made to the State Board of Public Welfare. All sums to which the United States or the State of North Carolina may become entitled under the provisions of this article shall be promptly paid or credited. All such sums to which the State may become entitled shall be deposited in the State Old Age Assistance Fund and shall become a part of that fund.

All necessary costs incurred in the collection of any claim shall be borne proratably by the United States, the State, and the county in proportion to the share of the sum collected to which each may be entitled: Provided, that neither the United States nor the State shall in any instance be chargeable for cost in excess of the sum received by it from the claim. Necessary costs of collection of any claim shall include all costs of services in the filing, processing, investigation, and collection of such claim. (1951, c. 1019, s. 1; 1955, c. 237, s. 3.)

Cross Reference.—See note to § 108-30.1.

§ **108-31. Action by county commissioners.**—The board of county commissioners, in the event that they shall be of the opinion that any award made by the county board of welfare should be reconsidered and reviewed by them, shall have the right to review such award. In case of such action by the board of county commissioners, notice shall be given to the applicant fixing the time and place at which such reconsideration will be held. In the event the board of county commissioners deems that any award should be in any respect changed, an order shall be made thereon accordingly and notice thereof given to the applicant and a copy sent to the county board of welfare and the State Board of Allotments and Appeal. (1937, c. 288, s. 16.)

§ **108-32. Assistance not assignable; checks payable to decedents.**—The assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

In the event of the death of an old age assistance recipient during or after the first day of the month for which a grant was previously authorized by the county welfare board, any old age assistance check or checks payable to such recipient not endorsed prior to such recipient's death, shall be delivered to the clerk of the superior court of the county on which the check was drawn and by him administered under the provisions of §§ 28-68 and 28-68.2 of the General Statutes. (1937, c. 288, s. 17; 1945, c. 615, s. 1; 1953, c. 213.)

§ **108-33. State Board of Allotments and Appeal.**—For the purpose of making allotment of State and federal funds to the several counties, and of giving to applicants appealing from the county boards a fair hearing and determination upon such applications and appeal, there shall be created within the State Board of Public Welfare and as an agency of said Board, subject to its supervision and control by rules and regulations adopted by it, a body to be known as "The State Board of Allotments and Appeal," consisting of three members as follows:

The chairman of the State Board of Public Welfare;

The Commissioner of Welfare;

The Director of Public Assistance, established by this article; all of whom shall be ex officio members of the State Board of Allotments and Appeal. The chairman of the State Board of Public Welfare shall be the chairman of the Board of Allotments and Appeal.

If an application is not acted upon by the county welfare board within a reasonable time, or is denied in whole or in part, or if any award of assistance is modified or canceled under any provisions of this article, the applicant or recipient may appeal to the Board of Allotments and Appeal in the manner and form prescribed by the said Board of Allotments and Appeal. The Board of Allotments and Appeal shall, upon receipt of such an appeal, give the applicant or recipient, the board of county commissioners and the county board of welfare reasonable notice and opportunity for a fair hearing. Upon such hearing the applicant or recipient shall have an opportunity of presenting his claim in full to the Board upon such evidence as may be pertinent or proper; and the Board of Allotments and Appeal shall diligently inquire into the matter, and shall approve or disapprove or modify the action of the county board of welfare or the board of county commissioners, as in the judgment of the Board of Allotments and Appeal may be just and proper.

Upon any appeal from the board of county commissioners or county board of welfare, it shall be the duty of such board to forward to the Board of Allotments and Appeal a certified copy of the order refusing assistance or granting the same, with such information, in brief, as may bear upon the application and the action of the board of commissioners or county board of welfare, and such papers and documents or other matter as may be required under the rules of the State Board of Allotments and Appeal, or under its order in the particular matter.

When the State Board of Allotments and Appeal shall have made its final decision upon the matter, notice thereof shall be given to the applicant or recipient and to the board of county commissioners and county board of welfare. The decision of the State Board of Allotments and Appeal shall be final.

The State Board of Allotments and Appeal may also, on notice to the board of county commissioners and county board of welfare, upon its own motion, review any decision of the board of county commissioners or county board of welfare, and may consider any application upon which a decision has not been made within thirty days. The State Board of Allotments and Appeal may make such additional investigation as it may deem necessary in all cases, and make such decision thereupon as in its opinion is justified and in conformity with the provisions of this article. Applicants, or recipients, affected by such decision of the State Board of Allotments and Appeal shall, upon request, be given reasonable notice and opportunity for a fair hearing by the State Board of Allotments and Appeal. All decisions of the State Board of Allotments and Appeal shall be final and shall be binding upon the county involved, and shall be complied with by the board of county commissioners and county board of welfare.

The State Board may authorize hearings of appeals in any county by other representatives selected by said Board, subject to final determination by the State Board of Allotments and Appeal. (1937, c. 288, s. 18; 1939, c. 395, s. 1; 1957, c. 100, s. 1.)

§ **108-34. Periodic reconsideration and changes in amount of assistance.**—All assistance grants made under this article shall be reconsidered as frequently as may be required by the rules of the State Board. It shall be the duty of the county welfare board, with the assistance of the county welfare officer, to keep fully advised as to questions concerning old age assistance and the propriety and necessity of the continuance thereof to recipients and as to such changed conditions relating to recipients as may affect the necessity for such assistance or the amount thereof.

Where changes have occurred in the condition of any recipient requiring a modification or cancellation of an award, the county board of welfare is authorized and empowered to make such changes as the facts and circumstances may justify and in accordance with the provisions of this law. Prompt notice of such action shall be given to the recipient, and a copy of such notice shall be sent to the State Board and board of county commissioners. Such action on the part of the county board shall be subject to review by the State Board as provided in cases of original awards, and the recipient shall have the right to appeal therefrom to the State Board of Allotments and Appeal as in cases of original awards. (1937, c. 288, s. 19.)

§ **108-35. Removal to another county.**—Any recipient who moves to another county in this State shall be entitled to receive assistance in the county to which he has moved, and the county welfare director of the county from which he has moved shall transfer all necessary records relating to the recipient to the county welfare director of the county to which he has moved. The county from which the recipient moves shall pay the assistance for a period of three months following such removal, and thereafter assistance shall be paid by the county to which such recipient has moved. (1937, c. 288, s. 20; 1943, c. 505, s. 3; 1961, c. 186; 1963, c. 136.)

Editor's Note. — The 1963 amendment deleted the words "not in excess of amount paid before removal" formerly appearing after the word "removal" in the last sentence of the section.

§ **108-36. Procedure preliminary to allotments and county taxation; investigation and report.**—It shall be the duty of the county welfare boards to make diligent investigation within the county and obtain and record statistical and other information concerning aged persons in the county entitled to assistance under this article, and to keep such information compiled in convenient accessible form. Therefrom they shall, annually, on or before the first day of May, compile and make a report to the board of county commissioners, for their better information and guidance, which report shall contain a concise statement or estimate of the total amount necessary to be expended within the county to carry out the provisions of this article for the next ensuing fiscal year, accompanied by such supporting data as the State Board of Allotments and Appeal may require. Such reports shall be made on forms furnished by the State Board, or in compliance with the rules and regulations of said State Board. A copy thereof shall be immediately forwarded to the State Board.

Upon the information so furnished, and such other information as may be available, or may be obtained upon such further investigation as the board of commissioners may see proper to make, the board of commissioners shall make a careful estimate of the amount necessary to be expended within the county for the purposes of this article for the ensuing fiscal year, and, separately stated, the amount necessary to be raised by county taxation. The board of county commissioners shall, annually, on or before the first day of May, make a report to the State Board of Allotments and Appeal, which report shall contain the said estimates, with supporting data, in such form and detail as the Board of Allotments and Appeal may require. (1937, c. 288, s. 21.)

§ 108-37. Allocation of funds.—As soon as may be practicable after receiving the said reports, and before the time for the annual levy of taxes in the respective counties, the State Board of Allotments and Appeal shall proceed to ascertain and determine the amount of State and federal funds available for disbursement in the counties for the purposes of this article for the next ensuing fiscal year. The Board shall, at the same time, determine the amount to be raised in each of the respective counties by taxation to supplement the State and federal funds allotted to such county. The allotment of State and federal funds to any county shall not exceed three times the amount to be raised in said county by local taxation, except as provided in § 108-73.

The determination of such amount by the Board of Allotments and Appeal shall be final and binding upon the several counties respectively, and shall be a part of the county budget. The county commissioners shall, at the time of levying other taxes, levy and impose upon all the taxable subjects within the county a tax sufficient to produce such amount; and the same shall be collected as other taxes.

The proceeds of such taxes shall be kept in a separate fund in the county treasury, and shall be subject to the provisions of the Local Government Act with respect to depository security and control, and shall be used only for the purposes of this article. It shall be the duty of the Board of Allotments and Appeal to inquire into the condition of the said fund from time to time and to require that such protection be afforded the funds as occasion may demand. The funds shall be disbursed for the purposes of this article on warrants drawn on the county treasurer or other designated county officials where there is no county treasurer, signed by the secretary of the county welfare board, countersigned by the county auditor and chairman of the welfare board, for payments of grants to recipients: Provided, that in the event any temporary vacancy should exist in the office of county welfare director, or in the office of chairman of the county welfare board, the signature of either remaining officer together with that of the county auditor shall be sufficient for the disbursement of such funds. Warrants shall be drawn under this article for administrative purposes in accordance with the County Fiscal Control Act. (1937, c. 288, s. 22; 1939, c. 395, s. 1; 1943, c. 505, s. 4; 1955, c. 310, s. 1; 1961, c. 186.)

Local Modification.—Rowan: 1955, c. 420.

§ 108-38. Administration expenses.—The State Board of Allotments and Appeal shall annually allocate to the several counties of the State, in accordance with the total amount of benefit payments to be paid in each county for old age assistance therein, the sum provided by the federal government under the Social Security Act for payment of administrative expenses. Any amounts in excess of said allotments to the several counties, which are necessary to the proper administration of the public welfare program by the several counties, shall be determined by the State Board of Allotments and Appeal upon budgets submitted to said Board by the county welfare boards in each county. Said determination shall be made on or before the first day of June in each year.

After being so determined, an amount not to exceed one half of such costs shall be allocated and paid to the respective counties by the State Board of Allotments and Appeal from the appropriation made by the State for aid to county welfare administration. The balance of said county administrative expenses shall be paid by the respective counties. The State Board of Allotments and Appeal shall, on or before the first day of June in each year, notify the board of county commissioners in each county as to the amount of administrative expenses such county is required to provide, and upon receipt of such notice it shall be mandatory upon each county that taxes shall be levied within said county to provide for the payment of such part of such county's administrative expenses.

The county board of commissioners and the county board of welfare, in joint session, shall determine the number and salary of employees of the county board of welfare, having been advised by the county director of welfare and the State Board of Public Welfare; provided, however, that the members of the county boards of welfare shall not have a vote at such joint sessions. (1937, c. 288, s. 23; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1957, c. 100, s. 1; 1961, c. 186; 1963, c. 248, s. 1.)

Local Modification.—Cabarrus: 1963, c. 248, s. 2½.

Editor's Note. — The 1963 amendment added the proviso at the end of the section.

Cited in Atlantic Coast Line Ry. v. Duplin County, 226 N.C. 719, 40 S.E.2d 371 (1946).

§ **108-39. Transfer of State and federal funds to the counties.**—The State Old Age Assistance Fund shall be drawn out on the warrant of the State Auditor, issued upon order of the State Board, evidenced by the signature of the Commissioner of Welfare. Quarterly, and oftener, if in the sound judgment of the State Board it may be necessary, the State Board shall transfer to the several counties such part of the county allotment as may be necessary for disbursement in such county, in connection with county-raised funds, for a reasonable period. Before transferring said funds the State Board may, in its discretion, require that the county shall certify, through its auditor or fiscal agent, that sufficient county funds are on hand to pay the county quota of disbursement corresponding to the amount of State funds to be so transferred. The State Board of Allotments and Appeal is authorized, in its discretion, to transfer to any county for the first quarter in any fiscal year an amount sufficient to pay in full the awards approved in such county, one fourth of said amount being advanced to the county in anticipation of the collection of taxes. Such amount so advanced shall be deducted from allotments thereafter to be made to such county within the fiscal year.

The funds so transferred shall go into the county old age assistance fund, and be subject to all the provisions of the Local Government Act as to custody and depository protection; and the State Board may require such additional protection to such funds as they may deem proper.

When in the judgment of the State Board the disbursement of funds in the counties to recipients entitled to assistance is being unduly delayed, or the payments to such recipients jeopardized, the State Board may require, as a condition for the allotment or transmission of any funds to the county for disbursement, that such awards shall be promptly paid, and may withhold the funds from such counties until satisfied that the awards are being paid with promptness and certainty. When in its judgment the public interest may require and the funds collected in the county for disbursement hereunder may be better protected, and greater promptness and certainty may be secured in payment of awards to recipients entitled to receive same, the State Board may demand and require that the funds raised by taxation in any county be transmitted to the Treasurer of the State, subject to disbursement under such rules and regulations as the State Board may adopt. Immediately upon notice to the board of county commissioners of the county affected, and to the officials of the said county having any such funds in custody, such board of county commissioners and officials shall immediately transfer all of such funds and pay over the same to the State Treasurer for disbursement, under the rules and regulations aforesaid. (1937, c. 288, s. 24.)

§ **108-40. Accounts and reports from county officers.**—The boards of county commissioners shall cause proper accounts to be kept of the receipts and disbursements under this article, and shall make a quarterly report to the State Board in detail, showing such receipts and the persons to whom disbursements have been made, and the amount thereof. Such reports may be required by the State Board as often as may be deemed necessary. The accounts shall at all times be open to inspection by the State Board and its authorized auditors, supervisors and deputies. (1937, c. 288, s. 25.)

§ **108-41. Further powers and duties of State Board.**—The State Board is authorized and directed to make such reports as may be required by the federal government under the Social Security Act; to keep the funds received from the federal government in such manner and in such account, and cause the same to be disbursed as may be required by such federal administrative authority, notwithstanding any provisions hereof; and the provisions of this article with respect to the handling, disbursement of federal funds, where contrary to the rules and regulations of federal authority, shall be deemed directory only, so that such rules and regulations shall prevail; but otherwise they shall be mandatory. (1937, c. 288, s. 26.)

§ **108-42. Fraudulent acts made misdemeanor.** — Whoever knowingly obtains an initial award of assistance, assistance, a continuation of assistance after such initial award, or assistance greater than that to which he is justly entitled, initially or thereafter, when such person is ineligible and not entitled to such assistance, by means of willfully making a false statement or representation knowing same to be false, or by means of failing to disclose a material fact, or by impersonation or by any fraudulent scheme, plan or device; or, whoever knowingly attempts to obtain or aids and abets any person to obtain an initial award of assistance, assistance, a continuation of assistance after such initial award, or assistance greater than that to which he is justly entitled, initially or thereafter, when such person is ineligible and not entitled to such assistance, by means of willfully making a false statement or representation knowing same to be false, or by failing to disclose a material fact or by any fraudulent scheme, plan, device, or impersonation, shall be guilty of a misdemeanor, and upon conviction, or plea of guilty, shall be fined or imprisoned, or both, at the discretion of the court. (1937, c. 288, s. 27; 1963, c. 1062.)

Editor's Note. — The 1963 amendment rewrote this section.

§ **108-43. Limitations of article.**—All assistance granted under this article shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing act. (1937, c. 288, s. 28.)

Part 2. Aid to Dependent Children.

§ **108-44. Short title.**—This part may be cited as the "Aid to Dependent Children Act." (1937, c. 288, s. 60.)

Cited in Atlantic Coast Line Ry. v. Beaufort County, 224 N.C. 115, 29 S.E.2d 201 (1944); Atlantic Coast Line Ry. v. Duplin County, 226 N.C. 719, 40 S.E.2d 371 (1946).

§ **108-45. Establishment of relief.** — The care and relief of dependent children who are in need and who are unable to provide for themselves is a legitimate obligation of government which cannot be ignored or avoided without injustice to such persons and serious detriment to the purposes of organized society. Such care and relief is hereby declared to be a matter of State concern and necessary to promote the public health and welfare. In order to provide such care and relief at public expense, to the extent that the same may be proper, with due regard to the revenues which the State may equitably enjoy, and with due regard for other necessary objects of public expenditure, a state-wide system of aid to dependent children is hereby established, to operate uniformly throughout the State and in every county thereof, and with due regard to the varying living conditions and the financial, physical, and other conditions of the recipient of such relief, more particularly dealt with in this article. The provisions of this article are mandatory on the State, and each and every county thereof, and whenever the levy of any tax is required or directed herein, it shall be understood that the said tax is levied for a special purpose; and full authority is hereby given to the boards of county commissioners of the several counties to levy, impose, and collect the taxes herein required for the special purpose of aid to dependent children as defined and provided for in this article. (1937, c. 288, s. 31.)

§ **108-46. Definitions.**—As used in this article,

(1) "Applicant" shall mean any person who has applied for relief for dependent children under this part.

(2) "Assistance" as used under this part means the money payments for any month with respect to or payments for medical care in behalf of a dependent child or dependent children and the needy relative with whom any dependent child or dependent children live if the money payments have been made with respect to such child or children for such month.

(3) "County board of welfare" shall mean the county board of public welfare of each of the several counties, as now established by law, subject to such modifications as may be made by law.

(4) "Recipient" shall mean any person who has received assistance for dependent children under the provisions of this part.

(5) "Social Security Board" shall be interpreted to include any agency or agencies of the federal government which may be substituted therefor by law.

(6) "State Board" shall mean the State Board of Public Welfare, established by this chapter. (1937, c. 288, s. 32; 1939, c. 395, s. 1; 1951, c. 1098, s. 4; 1957, c. 100, ss. 1, 2.)

§ **108-47. Acceptance of federal grants.**—The provisions of the federal Social Security Act, relating to grants-in-aid to the State for aid to dependent children, and the benefits thereunder, are hereby accepted and adopted, and the provisions of this article shall be liberally construed in relation to the said federal Social Security Act, so that the intent to comply therewith shall be made effectual. (1937, c. 288, s. 33.)

Stated in State Bd. of Pub. Welfare v. Board of Comm'rs, 262 N.C. 475, 137 S.E.2d 801 (1964).

§ 108-48. Amount of relief.—The maximum amount to be allowed per month under this article shall not exceed eighteen dollars ($18.00) for one child and twelve dollars ($12.00) additional per month for each of the other dependent children in the home eligible to assistance under this article: Provided, the total amount shall not exceed sixty-five dollars ($65.00), except in extraordinary circumstances in which it appears to the satisfaction of the State Board that a total of sixty-five dollars ($65.00) per month would be insufficient to secure the purpose above set forth. Provided further, that within the limitations of the State appropriation the maximum amount per child may be increased not in excess of the amount which may hereafter be matched by the federal government. (1937, c. 288, s. 34; 1945, c. 615, s. 1.)

§ 108-49. Dependent children defined.—The term "dependent child" as used in this article shall mean a child under twenty-one years of age who is living with his or her father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, adoptive father, adoptive mother, grandfather-in-law, great-grandfather, grandmother-in-law, great-grandmother, brother of the half blood, brother-in-law, adoptive brother, sister of the half blood, sister-in-law, adoptive sister, uncle-in-law, aunt-in-law, great-uncle, and great-aunt, in a place of residence maintained by one or more of such relatives as his or their own home or who is living in a foster home licensed by the State Board of Public Welfare; who has resided in the State of North Carolina for one year immediately preceding the application for aid; or who was born within the State within one year immediately preceding the application if the mother has resided in the State for one year immediately preceding the birth, and who has been deprived of parental support or care by reason of the death, physical or mental incapacity or continued absence from the home of a parent, and who has no adequate means of support. (1937, c. 288, s. 35; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1961, c. 533; 1965, c. 939, s. 1.)

Editor's Note. — The 1965 amendment substituted "twenty-one" for "eighteen" near the beginning of this section.

§ 108-50. Conditions of eligibility.—The following conditions of eligibility for assistance under this part are hereby established:

(1) No child having passed his sixteenth birthday shall be eligible for assistance if such child has the ability and capacity for gainful employment, unless the child is regularly enrolled and attending school or unless no gainful employment is available: Provided that no such child will be eligible for assistance during the summer months unless no gainful employment is available; provided further, that no child who is eighteen or more years of age shall be eligible for assistance unless he is a student regularly attending a high school and successfully pursuing a course of study leading to a high school diploma or its equivalent, or regularly attending and successfully pursuing a course of vocational or technical training designed to fit him for gainful employment.

(2) No parent with whom a dependent child is living shall be made the payee of an assistance grant if such parent has the ability and capacity for gainful employment and is not employed (either on a part or full-time basis) unless the parent is needed in the home to provide continuous care for, or supervision over, a child or children in the home, or unless no gainful employment is available.

(3) Any child or parent required by this section to engage in gainful employment, but for whom no gainful employment is available, shall be registered with an employment service and shall make reasonable and continuous efforts to find gainful employment. Proof of registration

with an employment service shall be provided by the child or parent to the county welfare department. (1961, c. 998; 1963, c. 1061; 1965, c. 939, s. 2.)

Editor's Note.—This numbered section, formerly relating to eligibility to receive aid for a dependent child, was derived from Public Acts 1937, c. 288, s. 36, as amended by Public Acts 1941, c. 232, and was repealed by Session Laws 1945, c. 615, s. 2.

The 1961 act, inserting a section pertaining to cooperative arrangements with employment offices and the termination of federal aid, assigned it the same number as the former repealed section.

The 1963 amendment rewrote this section.

The 1965 amendment added the second proviso in subdivision (1).

§ 108-51. State Aid to Dependent Children Fund. — A fund shall be created to be known as "The State Aid to Dependent Children Fund." This Fund shall be created by appropriations made by the State from its ordinary revenues and such grants as may be made for aid to dependent children under the federal Social Security Act. Said Fund shall be used exclusively for the relief of dependent children coming within the eligibility provisions of this part and the cost of administration of the same. The appropriations to be made by the State for such purpose shall be supplemented by the amount provided under the federal Social Security Act for aid to dependent children and such further amount as the State may appropriate for the administration of this article. From said Fund there shall be paid as hereinafter provided three fourths of the benefit payments to dependent children in accordance with the provisions hereof, the other one fourth of said payments shall, subject to the provisions of § 108-73, be provided by the several counties of the State as hereinafter required.

In the event that the federal Social Security Act is amended by providing for a larger percentage of contributions to said Fund, the provisions herein made shall be construed to accept such additional grants, and the amounts to be provided for aid to dependent children by State and counties shall be adjusted proportionately. (1937, c. 288, s. 37; 1941, c. 232; 1943, c. 505, s. 5.)

Cited in Atlantic Coast Line Ry. v. Duplin County, 226 N.C. 719, 40 S.E.2d 371 (1946).

§ 108-52. State appropriation. — At its present session, and biennially thereafter, the General Assembly shall appropriate out of its ordinary revenues, for the use of such Fund, such amount as shall be reasonably necessary to carry out the provisions of this article, and provide relief to the dependent children coming within the eligibility provisions herein set out, to such an extent as may be proper upon due consideration of the ability of the State to produce sufficient revenues, and with due regard to other necessary objects of public expenditure. (1937, c. 288, s. 38.)

§ 108-53. County fund.—Annually, at the time other taxes are levied in each of the several counties of the State, there shall be levied and imposed a tax sufficient to raise such an amount as shall be found necessary, in the manner hereinafter provided, to supplement the State and federal funds available for expenditure in said county for aid to dependent children. The amount so ascertained shall be an obligation of the county, and the taxes imposed shall be collectible as other taxes. (1937, c. 288, s. 39.)

§ 108-54. Appropriations not to lapse.—No appropriation made for the purpose of this article shall lapse or revert; but the unexpended balances may be considered in the making of further appropriations. Any proceeds of county taxation for the purposes of this article remaining unexpended shall be taken into account in determining the amount to be raised by taxation during the ensuing year, but shall not be used for any purpose not authorized by this article: Provided, that if at any time during any fiscal year it appears to be necessary and feasible, the county may transfer with the approval of the State Board of Allotments and Appeal a portion of the amount raised by the county for aid to dependent children to the county old age assistance fund. (1937, c. 288, s. 40; 1945, c. 615, s. 1.)

§ 108-55. Custody and receipt of funds.—The Treasurer of the State of North Carolina is hereby made ex officio treasurer of the State Aid to Dependent Children Fund herein established, including therein such grants-in-aid to dependent children as may be received from the federal government for administration and distribution in this State; and the said Treasurer is hereby designated as the proper officer to receive grants-in-aid from the federal government. The Treasurer shall keep the funds in a separate account, to be known as the State Aid to Dependent Children Fund, and shall be responsible therefor on his official bond; and the said funds shall be protected by proper depository security as other State funds. The said Fund shall be drawn upon and disbursed as hereinafter provided. (1937, c. 288, s. 41.)

§ 108-56. General powers and duties of Department of Public Welfare. — The powers and duties of the State Board of Public Welfare established under Article XI, section seven, of the Constitution of North Carolina, and this chapter, and of the office of Commissioner of Welfare established thereunder, are not hereby abridged. The powers and duties herein given shall be in addition to those heretofore exercised under existing laws; and the State Board of Public Welfare, through the Commissioner of Welfare as the executive head of the Department, is hereby empowered to organize the Department into such bureaus and divisions as may be deemed advisable, not inconsistent with the provisions of this article, in order that the work of the entire Department shall be coordinated on an efficiency basis and duplication of effort may be avoided. (1937, c. 288, s. 42; 1957, c. 100, s. 1.)

§ 108-57. Certain powers and duties of State Board of Public Welfare.—The State Board shall:

(1) Supervise the administration of assistance to dependent children under this article by the county boards;

(2) Make such rules and regulations and take such action as may be necessary or desirable for carrying out the provisions of this article. All rules and regulations made by the State Board shall be binding on the counties and shall be complied with by the respective boards of county commissioners and county boards of welfare;

(3) Prescribe the form of and print and supply to the county boards and agencies such forms as it may deem necessary and advisable;

(4) Cooperate with the federal government in matters of mutual concern pertaining to assistance to dependent children, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance;

(5) Make such reports, in such form and containing such information, as the federal government may from time to time require, and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports;

(6) Publish reports as may be necessary;

(7) Enter into reciprocal agreements with public welfare agencies in other states relative to providing for assistance and services to residents, nonresidents or transients, and cooperate with other agencies of the State and federal governments in providing such assistance and services and in the study of the problems involved;

(8) The North Carolina State Board of Public Welfare is hereby authorized and empowered to receive grants-in-aid from the federal government or any State or federal agency for general relief or for any other relief purposes; and all such grants so made and received shall be paid to the State Treasurer and credited to the account of the North Carolina State Board of Public Welfare, to be used in carrying out the provisions of this article;

(9) Make to the solicitor of superior court those reports relating to recipients of assistance under the provisions of this act as required by G.S. 15-155.1 and shall assist the solicitor in making any investigation relative thereto both actively and by furnishing to him all information available to it or any local board relative to such assistance. (1937, c. 288, s. 43; 1939, c. 395, s. 1; 1943, c. 505, s. 6; 1957, c. 100, s. 1; 1959, c. 1210, s. 3.)

Editor's Note.—Session Laws 1959, c. 1210, which added subdivision (9) to this section, provides that the act shall not apply to the counties of Gaston and Mecklenburg. The words "this act" as used in subdivision (9) refer to Session Laws 1959, c. 1210. For other sections of that act, see §§ 15-155.1 to 15-155.3, 108-76.1, 108-76.2. For provision prohibiting action under Session Laws 1959, c. 1210, if such action will result in termination of payments of federal funds to North Carolina for public assistance, see § 108-76.2.

§ 108-58. Certain powers and duties of local boards; county welfare boards.—The county boards of welfare shall perform the duties herein required of them with relation to the administration of this article in the several counties, under the supervision and direction of the State Board, and in accordance with the rules and regulations prescribed by said State Board.

County boards of welfare shall:

(1) Report to the State Board at such times and in such manner and form as the State Board may from time to time direct;

(2) Submit to the State Board the information required in this article preliminary to determination of the county's quota of funds and the determination of the amount required to be raised by taxation, together with its estimate and supporting data, setting forth the amount of money needed to carry out the provisions of this article; also submit to the board of county commissioners a duplicate of the estimate and supporting data furnished by it to the State Board. Make and report to the State Board and to the county board of commissioners such investigation as may be required in order that the said State Board and boards of county commissioners may be fully informed as to the assistance required by dependent children coming within the eligibility provisions of this article; and may have such other information as may be required for proper determination upon any matter coming before the said boards;

(3) Perform any other duties required of them under this article or by proper rules and regulations made by the State Board under authority thereof. (1937, c. 288, s. 44.)

§ 108-59. Application for assistance; determination thereon.—Applications for assistance under this article shall be made to the county welfare board of the county in which the applicant resides. Such application shall be in writing and in duplicate, in compliance with the rules and regulations established by the State Board, which is required to furnish forms for such applications. Where the applicant is unable to present his application in writing by reason of illiteracy or other cause, the application shall be reduced to writing and filed in duplicate, on such forms as may be supplied by the State Board, or substantially in agreement therewith. The county board of welfare, and the county welfare officer, shall render to applicants for assistance under this article such aid and assistance in the preparation of the applications as may be necessary. One copy of the application shall be forwarded to the State Board.

Whenever a county board of welfare receives an application for assistance under this article, an investigation and record shall promptly be made of the circumstances of the children for whom application is made, in order to ascertain the facts supporting the application, and in order to obtain such other information as may be required by the rules of the State Board. In the making of such investigation, the county welfare board and the county welfare officer shall make diligent investigation, and record promptly all the information which it is reasonably possible to obtain with respect to such application.

Upon the completion of the investigation the county board of welfare shall, upon due consideration, determine whether the applicant is eligible for assistance under the provisions of this article and shall determine the amount of such assistance and the date on which it shall begin, but such award shall in no case exceed eighteen dollars ($18.00) for one child and twelve dollars ($12.00) additional per month for each of the other dependent children in the home eligible to assistance under this article: Provided, the total amount shall not exceed sixty-five dollars ($65.00) except in extraordinary circumstances in which it appears to the satisfaction of the State Board that a total of sixty-five dollars ($65.00) per month would be insufficient to secure the purposes above set forth: Provided further, that within the limitations of the State appropriation the maximum amount per child may be increased not in excess of the amount which may hereafter be matched by the federal government. Such award so made, when effective shall thereafter be paid in advance monthly to the applicant, disbursement being made in the same manner and under the same procedure as in the case of other county funds: Provided, that, when it appears to the county board of public welfare that the interest of the beneficiary or beneficiaries of such award will be better served by smaller payments at more frequent intervals, such award shall be paid in two or more equal installments in each month.

The county board of welfare shall promptly notify by mail each applicant of its action disallowing the application for granting assistance, stating, in case award is made, the amount of the award and when assistance shall be paid. A copy of such notice shall be immediately forwarded to the board of county commissioners and a duplicate copy forwarded to the State Board of Allotments and Appeal.

The State Board is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications relating to applicants and recipients. It shall be unlawful, except for purposes directly connected with the administration of aid to dependent children and in accordance with the rules and regulations of the State Board for any person or persons to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving aid to dependent children, directly or indirectly derived from the records, papers, files, or communications of the State Board or the county welfare board or acquired in the course of the performance of official duties. (1937, c. 288, s. 45; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1959, c. 179, s. 2.)

§ **108-60. Action by county commissioners.**—The board of county commissioners, in the event that they shall be of the opinion that any award made by the county board of welfare should be reconsidered and reviewed by them, shall have the right to review such award. In case of such action by the board of county commissioners, notice shall be given to the applicant fixing the time and place at which such reconsideration will be held. In the event the board of county commissioners deem that any award should be in any respect changed, an order shall be made thereon accordingly and notice thereof given to the applicant and a copy sent to the county board of welfare and the State Board of Allotments and Appeal. (1937, c. 288, s. 46.)

§ **108-61. Assistance not assignable.**—The assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. (1937, c. 288, s. 47.)

§ **108-62. State Board of Allotments and Appeal.**—For the purpose of making allotment of State and federal funds to the several counties, and of giving to applicants appealing from the county boards a fair hearing and determination upon such applications and appeal, the State Board of Allotments and Appeal, created under § 108-33 shall as an agency of the State Board have complete and final jurisdiction. If an application is not acted upon by the county welfare board within thirty days or is denied in whole or in part, or if any award of assistance is modified or canceled under any provisions of this article, the applicant or recipient may appeal to the Board of Allotments and Appeal in the manner and form prescribed by the said Board of Allotments and Appeal. The Board of Allotments and Appeal shall, upon receipt of such an appeal, give the applicant or recipient and the board of county commissioners and county board of welfare reasonable notice and opportunity for a fair hearing. Upon such hearing the applicant or recipient shall have an opportunity of presenting his claim in full to the Board upon such evidence as may be pertinent or proper; and the Board of Allotments and Appeal shall diligently inquire into the matter, and shall approve or disapprove or modify the action of the county board of welfare and the board of county commissioners, as in the judgment of the Board of Allotments and Appeal may be just and proper.

Upon any appeal from the board of county commissioners, it shall be the duty of such board to forward to the State Board of Allotments and Appeal a certified copy of the order refusing assistance or granting the same, with such information, in brief, as may bear upon the application and the action of the board of commissioners, and such papers and documents or other matter as may be required under the rules of the Board of Allotments and Appeal, or under its order in the particular matter.

When the State Board of Allotments and Appeal shall have made its final decision upon the matter, notice thereof shall be given to the applicant or recipient and to the board of county commissioners and the county board of welfare. The decision of the State Board of Allotments and Appeal shall be final.

The State Board of Allotments and Appeal may also on notice to the board of county commissioners and county board of welfare, upon its own motion, review any decision of the board of county commissioners or county board of welfare and may consider any application upon which a decision has not been made within thirty days. The State Board of Allotments and Appeal may make such additional investigation as it may deem necessary in all cases and make such decision thereupon as in its opinion is justified and in conformity with the provisions of this article. Applicants, or recipients, affected by such decision of the State Board of Allotments and Appeal shall, upon request, be given reasonable notice and opportunity for a fair hearing by the Board of Allotments and Appeal. All decisions of the State Board of Allotments and Appeal shall be final and shall be binding upon the county involved, and shall be complied with by the board of county commissioners and the county board of welfare.

The State Board may authorize hearings of appeals in any county by other representatives selected by said Board, subject to final determination by the State Board of Allotments and Appeal. (1937, c. 288, s. 48.)

§ **108-63. Periodic reconsideration and changes in amount of assistance.**—All assistance grants made under this article shall be reconsidered as frequently as may be required by the rules of the State Board. It shall be the duty of the county welfare board, with the assistance of the county welfare officer, to keep fully advised as to questions concerning aid to dependent children and the propriety and necessity of the continuance thereof to recipients and as to such changed conditions relating to recipients as may affect the necessity for such assistance or the amount thereof.

Where changes have occurred in the condition of any recipient requiring a modification or cancellation of an award, the county board of welfare is authorized and empowered to make such changes as the facts and circumstances may justify and in accordance with the provisions of this law. Prompt notice of such action shall be given to recipient and a copy of such notice shall be sent to the State Board and board of county commissioners. Such action on the part of the county board shall be subject to review by the State Board as provided in cases of original awards, and the recipient shall have the right to appeal therefrom to the State Board of Allotments and Appeal as in cases of original awards. (1937, c. 288, s. 49.)

§ **108-63.1. Supervision of assistance in certain cases.** — Whenever a county board of welfare determines that the recipient of assistance payments granted under the provisions of part 2 of this article, entitled the Aid to Dependent Children Act, has not used said assistance to provide food, shelter, clothing, household and medical supplies, and other necessities, which are required for the care and support of the dependent child or children who are the intended beneficiaries of the assistance, or of the needy relative with whom such child or children live, then the county welfare board shall enter an order requiring the county superintendent of public welfare to supervise the expenditure of such assistance payments by the recipient, to cause such assistance to be used for the aforementioned necessities, and the superintendent shall comply with said order. Said supervision may include conferences with the recipient, preparation of monthly budgets for the recipient, requiring reporting on such expenditures by the recipient, and otherwise directing the expenditure of the assistance in accordance with such budgets.

Following the entry of the order requiring the superintendent to supervise the expenditure of the assistance, the county board of welfare shall cause notice thereof to be served on the recipient. If the recipient objects to the order, he may appear at the next meeting of the board held not less than five days after service of notice of the order upon the recipient, and, in such event, the superintendent shall not begin the supervision of the expenditures of the assistance until further order by the board. If, after hearing the recipient, the board reaffirms the order directing the superintendent to supervise the expenditures of assistance, the recipient may appeal therefrom to the State Board of Allotments and Appeal, in the manner and form prescribed by the Board of Allotments and Appeal.

The Board of Allotments and Appeal shall, upon receipt of such appeal, give the recipient and the county board of welfare reasonable notice and opportunity for a fair hearing. The decision of the State Board of Allotments and Appeal shall be final. In the event of such appeal, the order directing the superintendent to supervise the expenditures of assistance shall not be operative unless and until the State Board of Allotments and Appeal determines that the county board of welfare properly entered such order in accordance with the provisions of the section.

The county board of welfare may, at any time, rescind or terminate the order requiring the county welfare superintendent to supervise the expenditure of assistance. The supervision of expenditures provided in this section shall continue until the order is terminated by the county welfare board. (1959, c. 668, s. 1.)

Editor's Note. — Session Laws 1961, c. 186, changed the title of the county superintendent of public welfare to county director of public welfare.

Section 2 of c. 668, Session Laws 1959, provides: "In the event that the Secretary of Health, Education, and Welfare notifies the State Board of Public Welfare that further payments of federal funds to the State of North Carolina for aid to dependent children will not be made because the procedures provided by this act are prohibited by the Social Security Act, as amended, or by other applicable federal statutes, or by proper and authorized regulations having the force and effect of law, then and in that event no county board of welfare or county superintendent of public welfare shall take any further action pursuant to the provisions of this act."

§ **108-64. Removal to another county.** — Any resident who moves to another county and continues to have such dependent children in custody in this State shall be entitled to receive assistance in the county to which he has moved, and the county welfare director of the county from which he has moved shall transfer all necessary records relating to the recipient to the county welfare director of the county to which he has moved. The county from which the recipient moves shall pay the assistance for a period of three months following such removal, and thereafter assistance shall be paid by the county to which such recipient has moved. (1937, c. 288, s. 50; 1943, c. 505, s. 7; 1961, c. 186.)

§ **108-65. Procedure preliminary to allotments and county taxation; investigation and report.**—It shall be the duty of the county welfare boards to make diligent investigation within the county and obtain and record statistical and other information concerning dependent children in the county entitled to assistance under this article, and to keep such information compiled in convenient accessible form. Therefrom they shall, annually, on or before the first day of May, compile and make a report to the board of county commissioners, for their better information and guidance, which report shall contain a concise statement or estimate of the total amount necessary to be expended within the county to carry out the provisions of this article for the next ensuing fiscal year, accompanied by such supporting data as the State Board of Allotments and Appeal may require. Such reports shall be made on forms furnished by the State Board or in compliance with the rules and regulations of said State Board. A copy thereof shall be immediately forwarded to the State Board.

Upon the information so furnished, and such other information as may be available, or may be obtained upon such further investigation as the board of commissioners may see proper to make, the board of commissioners shall make a careful estimate of the amount necessary to be expended within the county for the purpose of this article for the ensuing fiscal year, and, separately stated, the amount necessary to be raised by county taxation. The board of county commissioners shall, on or before the first day of May, make a report to the State Board of Allotments and Appeal, which report shall contain the said estimates, with supporting data, in such form and detail as the Board of Allotments and Appeal may require. (1937, c. 288, s. 51; 1943, c. 505, s. 8.)

§ **108-66. Allocation of funds.**—As soon as may be practicable after receiving the said reports, and before the time for the annual levy of taxes in the respective counties, the State Board of Allotments and Appeal shall proceed to ascertain and determine the amount of State and federal funds available for disbursement in the counties for the purposes of this article for the next ensuing fiscal year. The Board shall, at the same time, determine the amounts to be raised in each of the respective counties by taxation to supplement the State and federal funds allotted to such county. The allotment of State and federal funds to any county shall not exceed three times the amount to be raised in said county by local taxation, except as provided in § 108-73.

The determination of such amount by the Board of Allotments and Appeal shall be final and binding upon the several counties respectively, and shall be a part of the county budget. The county commissioners shall, at the time of levying other taxes, levy and impose upon all the taxable subjects within the county a tax sufficient to produce such amount; and the same shall be collected as other taxes.

The proceeds of such taxes shall be kept in a separate fund in the county treasury, and shall be subject to the provisions of the Local Government Act with respect to depository security and control, and shall be used only for the purposes of this article. It shall be the duty of the Board of Allotments and Appeal to inquire into the condition of the said fund from time to time and to require that such protection be afforded the funds as occasion may demand. The funds shall be disbursed for the purposes of this article on warrants drawn on the county treasurer or other designated county officials where there is no county treasurer, signed by the secretary of the county welfare board, countersigned by the county auditor and chairman of the welfare board, for payments of grants to recipients:

Provided, that in the event any temporary vacancy should exist in the office of county welfare superintendent or in the office of chairman of the county welfare board, the signature of either remaining officer together with that of the county auditor shall be sufficient for the disbursement of such funds. Warrants shall be drawn under this article for administrative purposes in accordance with the County Fiscal Control Act. (1937, c. 288, s. 52; 1939, c. 395, s. 1; 1941, c. 232; 1945, c. 615, s. 1; 1955, c. 310, s. 2.)

Editor's Note.—Session Laws 1961, c. 186, changed the title of the county superintendent of public welfare to county director of public welfare.

§ **108-67. Administration expenses.** — The State Board of Allotments and Appeal shall annually allocate to the several counties of the State the sum provided by the federal government under the Social Security Act for payment of administrative expenses. Any amounts in excess of said allotments to the several counties, which are necessary to the proper administration of the public welfare program by the several counties, shall be determined by the State Board of Allotments and Appeal upon budgets submitted to said Board by the county welfare boards in each county. Said determination shall be made on or before the first day of June in each year.

After being so determined, an amount not to exceed one half of such costs shall be allocated and paid to the respective counties by the State Board of Allotments and Appeal from the appropriation made by the State for aid to county administration. The balance of said county administrative expenses shall be paid by the respective counties. The State Board of Allotments and Appeal shall, on or before the first day of June in each year, notify the board of county commissioners in each county as to the amount of administrative expenses such county is required to provide, and upon receipt of such notice, it shall be mandatory upon each county that taxes shall be levied within said county to provide for the payments of such part of such county's administrative expenses. (1937, c. 288, s. 53; 1941, c. 232; 1943, c. 505, s. 9; 1945, c. 615, s. 1.)

Cited in Atlantic Coast Line Ry. v. Duplin County, 226 N.C. 719, 40 S.E.2d 371 (1946).

§ **108-68. Transfer of State and federal funds to the counties.**—The aid to dependent children fund shall be drawn out on the warrant of the State Auditor, issued upon order of the State Board, evidenced by the signature of the Commissioner of Welfare. Quarterly, and oftener, if in the sound judgment of the State Board it may be necessary, the State Board shall transfer to the several counties such part of the county allotment as may be necessary for disbursement in such county, in connection with county-raised funds for a reasonable period. Before transferring said funds the State Board may, in its discretion, require that the county shall certify, through its auditor or fiscal agent, that sufficient county funds are on hand to pay the county quota of disbursement corresponding to the amount of State funds to be so transferred. The State Board of Allotments and

Appeal is authorized, in its discretion, to transfer to any county for the first quarter in any fiscal year an amount sufficient to pay in full the awards approved in such county, one fourth of said amount being advanced to the county in anticipation of the collection of taxes. Such amount so advanced shall be deducted from allotments thereafter to be made to such county within the fiscal year.

The funds so transferred shall go into the county aid to dependent children fund, and be subject to all the provisions of the Local Government Act as to custody and depository protection; and the State Board may require such additional protection to such funds as they may deem proper.

When in the judgment of the State Board the disbursement of funds in the counties to recipients entitled to assistance is being unduly delayed, or the payments to such recipients jeopardized, the State Board may require, as a condition for the allotment or transmission of any funds to the county for disbursement, that such awards shall be promptly paid, and may withhold the funds from such counties until satisfied that the awards are being paid with promptness and certainty. When in its judgment the public interest may require and the funds collected in the county for disbursement hereunder may be better protected, and greater promptness and certainty may be secured in payment of awards to recipients entitled to receive same, the State Board may demand and require that the funds raised by taxation in any county be transmitted to the Treasurer of the State, subject to disbursement under such rules and regulations as the State Board may adopt. Immediately upon notice to the board of county commissioners of the county affected, and to the officials of the said county having any such funds in custody, such board of county commissioners and officials shall immediately transfer all of such funds and pay over the same to the State Treasurer for disbursement, under the rules and regulations aforesaid. (1937, c. 288, s. 54; c. 405; 1943, c. 505, s. 10.)

§ **108-69. Accounts and reports from county officers.**—The boards of county commissioners shall cause proper accounts to be kept of the receipts and disbursements under this article, and shall make a quarterly report to the State Board in detail, showing such receipts and the persons to whom disbursements have been made, and the amount thereof. Such reports may be required by the State Board as often as may be deemed necessary. The accounts shall at all times be open to inspection by the State Board and its authorized auditors, supervisors, and deputies. (1937, c. 288, s. 55.)

§ **108-70. Further powers and duties of State Board.** — The State Board is authorized and directed to make such reports as may be required by the federal government under the Social Security Act; to keep the funds received from the federal government in such manner and in such account, and cause the same to be disbursed as may be required by such federal administrative authority, notwithstanding any provisions hereof; and the provisions of this article with respect to the handling, disbursement of federal funds, where contrary to the rules and regulations of federal authority, shall be deemed directory only, so that such rules and regulations shall prevail; but otherwise they shall be mandatory. (1937, c. 288, s. 56.)

§ **108-71. Fraudulent acts made misdemeanors.**—Whoever knowingly obtains an initial award of assistance, assistance, a continuation of assistance after such initial award, or assistance greater than that to which he is justly entitled, initially or thereafter, when such person is ineligible and not entitled to such assistance, by means of willfully making a false statement or representation knowing same to be false, or by means of failing to disclose a material fact, or by impersonation or by any fraudulent scheme, plan or device; or, whoever knowingly attempts to obtain or aids and abets any person to obtain an initial award of assistance, assistance, a continuation of assistance after such initial award, or assistance greater than that to which he is justly entitled, initially or thereafter, when such person is ineligible and not entitled to such assistance, by means of willfully making a false statement or representation knowing same to be false, or by failing to disclose a material fact or by any fraudulent scheme, plan, device, or impersonation, shall be guilty of a misdemeanor, and, upon conviction, or plea of guilty, shall be fined or imprisoned, or both, at the discretion of the court. (1937, c. 288, s. 57; 1963, c. 1013.)

Editor's Note.—The 1963 amendment rewrote this section.

§ **108-72. Limitations of article.**—All assistance granted under this article shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing act. (1937, c. 288, s. 58.)

§ **108-72.1. Payment by State for welfare payments to certain Indian residents.**—The State Board of Public Welfare is authorized and directed to set apart and reserve out of State welfare appropriations such an amount of funds which shall be found by the State Board of Allotments and Appeal to be sufficient to pay the counties the amount of welfare payments, plus the amount of administrative costs incidental to such payments, which the counties are otherwise required to provide under the provisions of this chapter for making welfare payments to or for Indian residents of any federal reservation held in trust by the United States government for the benefit of Indians.

From the funds reserved out of State Welfare appropriations the State Board of Public Welfare shall pay amounts to the counties as the State Board of Allotments and Appeal shall determine are appropriate under the requirements of this section. Welfare payments and appropriations referred to in this section mean payments and appropriations for the purpose of old age assistance under G.S. 108-23, aid to dependent children under G.S. 108-52, aid to the permanently and totally disabled under G.S. 108-73.5, and medical assistance for the aged under G.S. 108-73.21. (1965, c. 708.)

§ **108-73. Equalizing fund.**—The State Board of Allotments and Appeal is authorized and directed to set apart and reserve out of the appropriation authorized to be made by the State under § 108-23, relating to old age assistance, under § 108-52, relating to aid to dependent children, and under § 108-73.5, relating to aid to the permanently and totally disabled, and under § 108-73.21, relating to medical assistance for the aged, such an amount of said funds appropriated by the State to the respective funds as shall be found by the State Board of Allotments and Appeal to be necessary for the purpose of equalizing the burden of taxation in the several counties of the State, and the benefits received by the recipients of awards under this article, and such amount shall be expended and disbursed solely for the use and benefit of needy persons coming within the eligibility provisions of this article. Said amount shall be distributed to the counties according to the needs therein in conformity with the rules and regulations adopted by the State Board of Allotments and Appeal, producing, as far as practicable, a just and fair distribution thereof.

After determining the amount to be allotted to any county from such equalizing fund, the State Board of Allotments and Appeal shall determine the amount to be raised in such county by taxation to supplement the State and federal funds allotted to said county as in this article otherwise provided, and it shall be mandatory upon the boards of county commissioners in the several counties to annually levy taxes in accordance therewith. (1937, c. 288, s. 62; 1943, c. 505, s. 11; 1963, c. 551, ss. 1, 2; c. 599, s. 2; 1965, c. 409.)

Editor's Note.—The first 1963 amendment inserted in the first paragraph the reference to § 108-73.5, relating to aid to the permanently and totally disabled. It also deleted two provisos at the end of the first paragraph. The second 1963 amendment inserted in the first paragraph the reference to § 108-73.21, relating to medical assistance for the aged.

The 1965 amendment substituted "needy persons coming within the eligibility provisions of this article" for "needy aged persons and dependent children coming within the eligibility provisions of this article" at the end of the first sentence.

Part 3. General Assistance.

§ **108-73.1. Establishment of relief.**—The care and relief of all persons who are in need and who are unable to provide for themselves is a legitimate obligation of government which cannot be ignored or avoided without injustice to such persons and serious detriment to the purposes of organized society. Such care and relief is hereby declared to be a matter of State concern and necessity to promote the public health and welfare. In order to provide such care and relief at public expense, to the extent that the same may be proper, with due regard to State and county revenues and with due regard for other necessary objects of public expenditure, a state-wide system of general assistance is hereby established, to operate with due regard to the varying living conditions and the financial, physical, and other conditions of the recipient of such assistance. (1949, c. 1038, s. 2.)

§ **108-73.2. Acceptance of federal grants-in-aid; part liberally construed.**—The State Board of Public Welfare is hereby authorized to accept any grants-in-aid for general assistance which may be made available to the State by the federal government and the provisions of part 3 of this article shall be liberally construed in order that the State and its needy citizens may benefit fully from such grants-in-aid. (1949, c. 1038, s. 2.)

Cited in State Bd. of Pub. Welfare v. Board of Comm'rs, 262 N.C. 475, 137 S.E.2d 801 (1964).

§ **108-73.3. Assistance defined.**—Assistance as herein used means money payments to a needy individual or payments for medical care in behalf of such needy individual. (1949, c. 1038, s. 2; 1951, c. 1098, s. 5.)

§ **108-73.4. Eligibility.**—Assistance may be granted to any person who:

(1) Is unable to earn a sufficient income and is without any resources to provide a subsistence compatible with decency and health; and

(2) Is not an inmate of any public institution at the time of receiving assistance.

Applications for general assistance shall be made to the county director of public welfare who by and with the approval of the county welfare board shall determine whether aid is to be granted and the amount thereof.

The amount of assistance which any eligible person may receive shall be determined with due regard to the resources and necessary expenditures of the individual and the conditions existing in each case, and in accordance with the rules and regulations of the State Board of Public Welfare. Insofar as funds will permit, such assistance shall be sufficient when added to all other income and resources to provide such person with a reasonable subsistence compatible with decency and health, but the principle of equitable treatment shall be followed in each county as provided in the rules and regulations of the State Board of Public Welfare. Assistance may be granted to any person or for any purpose coming within the provisions of this section and the rules and regulations of the State Board of Public Welfare not inconsistent herewith, although such person or purpose may not come within federal requirements governing the use of federal grants-in-aid for general assistance purposes. Applications for general assistance shall be handled in the manner prescribed by the rules and regulations of the said Board. (1949, c. 1038, s. 2; 1961, c. 186.)

§ 108-73.5. State General Assistance Fund.—A fund shall be created to be known as the "State General Assistance Fund." This Fund shall be created by appropriations made by the General Assembly and such grants as may be received from the federal government for this purpose. Such Fund shall be used exclusively for assistance to needy persons found to be eligible in accordance with the provisions of part 3 of this article and the rules and regulations of the State Board of Public Welfare not inconsistent therewith.

The Treasurer of the State of North Carolina is hereby made ex officio Treasurer of the State General Assistance Fund herein established, including therein such grants-in-aid for general assistance as may be received from the federal government for administration and distribution in this State; and the said Treasurer is hereby designated as the proper officer to receive grants-in-aid from the federal government. The Treasurer shall keep the funds in a separate account, to be known as the "State General Assistance Fund," and shall be responsible therefor on his official bond; and the said funds shall be protected by proper depository security as other State funds. The said funds shall be disbursed for the purposes of this article on warrants drawn on the county treasurer or other designated county officials where there is no county treasurer, signed by the director of public welfare, countersigned by the county auditor, for payments of grants to recipients: Provided, that in the event any temporary vacancy should exist in the office of county welfare director, the signature of the chairman of the county welfare board together with that of the county auditor shall be sufficient for the disbursement of such funds. Warrants shall be drawn under this article for administrative purposes in accordance with the County Fiscal Control Act. (1949, c. 1038, s. 2; 1955, c. 310, s. 3; 1961, c. 186.)

§ 108-73.6. Allotment and transfer of federal and State funds to the counties.—Allotments shall be made annually by the State Board of Allotments and Appeal, created by § 108-33, in the manner prescribed in §§ 108-36 and 108-37: Provided, that no participating county shall receive from the State General Assistance Fund during any fiscal year less than ten percent (10%) or more than fifty percent (50%) of the total expenditures for general assistance as herein defined until such time as federal grants-in-aid for general assistance are available to the State.

When federal funds are available to North Carolina for general assistance, the State Board of Allotments and Appeal shall allot annually to each county from the State General Assistance Fund any proportion of the total amount to be expended for such purpose that the amount of federal and State funds available will permit: Provided that no county shall receive from such federal and State funds during any fiscal year more than ninety percent (90%) of the total expenditures for general assistance.

It is the purpose of the General Assembly that the allotments herein provided for shall be used by the counties entitled thereto solely as supplementary funds to increase the general assistance being provided, and no allotment shall be used, directly or indirectly, to replace county appropriations or expenditures.

State and federal funds shall be transferred to the counties as prescribed in § 108-39 of the General Statutes of North Carolina and all provisions of that section shall apply to general assistance funds, except that all funds so transferred shall be deposited in the county general assistance fund. (1949, c. 1038, s. 2.)

§ 108-73.7. Assistance not assignable.—The assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal processes, or to the operation of any bankruptcy or insolvency law. (1949, c. 1038, s. 2.)

§ 108-73.8. Accounts and reports from county officers.—The boards of county commissioners shall cause proper accounts to be kept of the receipts and disbursements under this article, and shall make a quarterly report to the State Board of Public Welfare in detail, showing such receipts and the persons to whom disbursements have been made, and the amount thereof. Such reports may be required by the State Board of Public Welfare as often as may be deemed necessary. The accounts shall at all times be open to inspection by the State Board of Public Welfare and its authorized auditors, supervisors and deputies. (1949, c. 1038, s. 2.)

§ 108-73.9. Further powers and duties of State Board.—The provisions of § 108-28 shall apply to part 3 of this article. The State Board of Public Welfare is authorized and directed to make such reports as may be required by the federal government under the Social Security Act; to keep the funds received from the federal government in such manner and in such account, and cause the same to be disbursed as may be required by such federal administrative authority, notwithstanding any provisions hereof; and the provisions of this article with respect to the handling and disbursement of federal funds, where contrary to the rules and regulations of federal authority, shall be deemed directory only, so that such rules and regulations shall prevail; but otherwise they shall be mandatory. (1949, c. 1038, s. 2.)

§ 108-73.10. Participation permissive; effect of federal grants.—The general assistance program herein established shall be administered as provided for in the rules and regulations of the State Board of Public Welfare, except that no county shall be granted any allotment from the State General Assistance Fund nor shall be subject to provisions of part 3 of this article unless its consent be given in the manner prescribed by the rules and regulations of the State Board of Public Welfare: Provided, that in the event federal general assistance grants shall be made available to the State upon condition that each county thereof participate in the general assistance program, then and in that event all of the provisions of part 3 of this article shall apply to and become mandatory upon every county. (1949, c. 1038, s. 2.)

§ 108-73.10a. Eligibility requirements for aid to the permanently and totally disabled; county medical review board. — Assistance shall be granted under this section to any person who:

(1) Is at least 18 years of age and under 65 years of age;

(2) Has resided in this State for one (1) year immediately preceding application for assistance;

(3) Has not sufficient income or other resources to provide reasonable subsistence compatible with decency and health;

(4) Is not an inmate of a public institution or an institution for tuberculosis or mental diseases;

(5) Is not a patient in a medical institution as a result of having tuberculosis or psychosis;

(6) Is found to be permanently and totally disabled within the meaning of this section. A permanently and totally disabled person is one who because of a mental or physical impairment is according to the present diagnosis substantially precluded from doing any work. The impairment must be of major importance and must be a condition not likely to improve or which will continue throughout the lifetime of the individual; and

(7) Is not receiving any public assistance from the State or from any political subdivision thereof, or any other type of federally aided public assistance.

For the purpose of determining whether or not applicants for assistance are permanently and totally disabled within the meaning of this section, the board of county commissioners of any county, with the approval of the county board of public welfare, may set up in the county a medical review board who shall review all medical examinations of applicants applying for assistance and certify their findings of disability to the State Board of Public Welfare in the manner and form prescribed by said State Board. (1963, c. 788.)

§ **108-73.11. County fund for aid to the permanently and totally disabled.**—Annually, at the time other taxes are levied in each of the several counties of the State, there may be levied and imposed a special tax for the purpose of raising such an amount as shall be determined necessary by the respective boards of county commissioners of the State for the program of aid to the permanently and totally disabled to supplement the State and federal funds available for expenditure in said county for aid to the permanently and totally disabled. The amount so ascertained shall be an obligation of the county, and the taxes imposed shall be collectible as are other taxes, and it shall be understood that the said tax is levied for a special purpose. The taxes collected from such levy shall be deposited to the credit of the county aid to the permanently and totally disabled fund. The levy of the special tax herein provided for shall be permissive and the requirement under this article that the several counties annually levy and impose taxes to provide for such amounts as such counties are required to pay for aid to the permanently and totally disabled shall be construed to mean that such counties may provide the sums to be raised by them from any sources of county income or revenue (including borrowing in anticipation of collection of taxes) which may be available for use for such purposes by such counties. (1953, c. 891; 1963, c. 535.)

Editor's Note. — The 1963 amendment deleted the words and figures "not to exceed five cents (5¢) per one hundred dollars ($100.00) assessed valuation" formerly appearing immediately after the words "special tax" near the beginning of the first sentence.

§ **108-73.12. Appropriation not to lapse.**—No appropriation for aid to the permanently and totally disabled shall lapse or revert, but the unexpended balance may be considered in making further appropriations. Any proceeds of county taxation for aid to the permanently and totally disabled remaining unexpended shall be taken into account in determining the amount to be raised by taxation during the ensuing fiscal year, but shall not be used for any purpose not authorized by this article: Provided, that if at any time during any fiscal year it appears to be necessary and feasible, the county may transfer a portion of the amount raised by the county for any one of the three assistance programs (old age assistance, aid to dependent children, and aid to the permanently and totally disabled) to the county fund maintained for any one of the other two assistance programs named herein. (1953, c. 891.)

§ **108-73.12a. Lien on real property of recipients of aid to permanently and totally disabled.**—There is hereby created a general lien, enforceable as hereinafter provided, upon the real property of any person who is receiving or who has received aid to permanently and totally disabled, to the extent of the total amount of such assistance paid to such recipient from and after October 1, 1963. Before any application for aid to the permanently and totally disabled is approved under the provisions of this article, the applicant shall agree that all such assistance paid to him shall constitute a claim against him and against his estate, enforceable according to law by any county paying all or part of such assistance. Such agreement may be contained in the application signed by the applicant. Immediately after the approval of an aid to the permanently and totally disabled grant, a statement showing the name of the recipient and the date of approval of the application shall be filed in the office of the clerk of the superior court in the county of residence of the recipient and in each county in which such recipient then owns or later acquires real property. The statement shall be filed in the regular lien docket, showing the name of the county filing said statement as claimant, or lienor, and the name of the recipient as owner, or lienee, and same shall be indexed in the name of the lienee in the defendants', or reverse alphabetical, side of the cross index to civil judgments; in said index the county shall appear as plaintiff, or lienor; no cross index in the name of the county, or lienor, shall be required. From the time of filing, such statement shall be and constitute due notice of a lien against the real property then owned or thereafter acquired by the recipient and lying in such county to the extent of the total amount of aid to the permanently and totally disabled paid to such recipient from and after October 1, 1963. The lien thus established shall take priority over all other liens subsequently acquired and shall continue from the date of filing until satisfied: Provided, that no action to enforce such lien may be brought more than ten (10) years from the last day for which assistance is paid nor more than three (3) years after the death of any recipient and the failure to bring such action within said time shall be a complete bar against any recovery and shall extinguish the lien: Provided further, that no execution in enforcement of the lien shall be levied upon any real property, so long as such property is occupied as a homesite by the surviving spouse or by any minor dependent child of such recipient, or as a homesite by the recipient, or a dependent adult child of such recipient who is incapable of self-support because of total mental or physical disability: Provided, further, that the board of county commissioners and the county board of public welfare of the county in which the recipient resides, acting jointly and after investigation, shall have the authority to subordinate any lien created by this section to a mortgage or lien created against the property of such recipient for the necessary repairs or improvements on said property, whether title to said property is held by the recipient alone or by the entirety with his or her spouse.

The State Board of Public Welfare shall furnish to the county director of public welfare forms to be used which shall contain such information as is required to carry out the provisions of this section and such other information as may be prescribed by the said Board.

Each county department of public welfare shall notify all persons shown of record to be recipients of aid to the permanently and totally disabled as of the date of notice that all aid to the permanently and totally disabled grants paid from and after October 1, 1963, shall constitute a lien against the real property and a claim against the estate of each recipient. The notice may be given by letter mailed to the last known address of each recipient, but failure to give such notice shall not affect the validity of the lien.

Upon receipt of a statement signed by the director of public welfare, setting forth the total amount of aid to the permanently and totally disabled paid to a recipient from and after October 1, 1963, the clerk of the superior court may, after reasonable notice to the county attorney within the same calendar month in which said statement was executed, accept payment of the total sum set forth in said statement, tendered by said recipient or in his behalf, and cancel the lien of record. The clerk of the superior court shall, within the same calendar month, give the director of public welfare notice of the receipt of such payment and of the cancellation of the lien, and shall hold or disburse the funds so received as provided by law. (1963, c. 1085.)

§ 108-73.12b. Action to be taken upon termination of assistance to permanently and totally disabled person.—The county department of public welfare shall, within six (6) months after the termination of an aid to the permanently and totally disabled grant by reason of death or otherwise, examine the case record of such recipient, the tax records of the county, and, in case of termination because of death, the records relating to executors, administrators, collectors, or other personal representatives. If it appears from this examination or from any other information which has come to the attention of the department, (i) that such recipient does not own, or has not owned since the date of the filing of the aid to the permanently and totally disabled lien against such recipient's realty, any real property, and (ii) that such recipient does not own nor his estate consist of any personal property in excess of one hundred dollars ($100.00), and (iii) in the case of termination because of death, that no executor, administrator, collector or other personal representative has been appointed, an entry shall be made in the case record reflecting the results of this examination. If it appears from this examination, from a subsequent examination, or from any other information which may come to the attention of the department, (i) that such recipient does own, or has owned since the date of the filing of the aid to the permanently and totally disabled lien against such recipient's realty, any real property, or (ii) that such recipient does own or his estate consists of personal property of a value in excess of one hundred dollars ($100.00), or (iii) in case of termination by death, that an executor, administrator, collector, or other personal representative has been appointed, then the department shall furnish to the county attorney all available information concerning the property of the recipient, the name of the spouse of the recipient, the township in which the recipient resides or resided, the race of the recipient, the total amount of aid to the permanently and totally disabled received by the recipient from and after October 1, 1963, by or through the State and the several counties thereof, and the reason for termination of the aid to the permanently and totally disabled grant. Upon receipt of this information, the county attorney shall take such steps as he may determine to be necessary to enforce the claim or lien herein provided. If it be made to appear to the clerk of the superior court that the personal property of the estate of a deceased recipient of aid to the permanently and totally disabled does not exceed one hundred dollars ($100.00) in value, a personal representative of such deceased recipient shall not be a necessary party to an action to enforce the aid to the permanently and totally disabled lien against such recipient's realty. Any funds remaining after satisfaction of such lien shall be paid into the office of the clerk of the superior court.

The claim against the estate of a recipient herein provided for shall have equal priority in order of payment with the sixth class under § 28-105 of the General Statutes: Provided, that no such claim shall be satisfied out of any real property in which the recipient had any legal or equitable interest so long as such property is occupied as a homesite by the recipient, the surviving spouse, any minor dependent child of such recipient, or by a dependent adult child of such recipient who is incapable of self-support because of total mental or physical disability. (1963, c. 1085.)

§ 108-73.12c. Disposition of funds recovered under §§ 108-73.12a and 108-73.12b.—The United States and the State of North Carolina shall be entitled to share in any sum collected under the provisions of §§ 108-73.12a and 108-73.12b, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid to the recipient. The county enforcing the claim as herein provided and any other county within the State which has paid aid to the permanently and totally disabled to such recipient shall share proratably in any sum collected. All sums collected shall be deposited in the county aid to the permanently and totally disabled fund and a report of such deposit made to the State Board of Public Welfare. All sums to which the United States or the State of North Carolina may become entitled under the provisions of §§ 108-73.12a and 108-73.12b shall be promptly paid or credited. All such sums to which the State may become entitled shall be deposited in the State Aid to the Permanently and Totally Disabled Fund and shall become a part of that Fund.

All necessary costs incurred in the collection of any claim shall be borne proratably by the United States, the State, and the county in proportion to the share of the sum collected to which each may be entitled: Provided, that neither the United States nor the State shall in any instance be chargeable for cost in excess of the sum received by it from the claim. Necessary costs of collection of any claim shall include all costs of services in the filing, processing, investigation, and collection of such claim. (1963, c. 1085.)

§ 108-73.12d. Fraudulent acts made misdemeanor; aid to the permanently and totally disabled. — Whoever knowingly obtains an initial award of assistance, a continuation of assistance after such initial award, or assistance greater than that to which he is justly entitled, initially or thereafter, when such person is ineligible and not entitled to such assistance, by means of willfully making a false statement or representation knowing same to be false, or by means of failing to disclose a material fact, or by impersonation or by any fraudulent scheme, plan or device; or, whoever knowingly attempts to obtain or aids and abets any person to obtain an initial award of assistance, a continuation of assistance after such initial award, or assistance greater than that to which he is justly entitled, initially or thereafter, when such person is ineligible and not entitled to such assistance, by means of willfully making a false statement or representation knowing same to be false, or by failing to disclose a material fact or by any fraudulent scheme, plan, device, or impersonation, shall be guilty of a misdemeanor, and, upon conviction, or plea of guilty, shall be fined or imprisoned, or both, at the discretion of the court. Whoever aids or abets in buying or in any way disposing of the property, either real or personal, of a recipient of assistance with the intent to defeat the purposes of this article, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined or imprisoned, or both, at the discretion of the court. (1963, c. 1024.)

Part 4. Medical Assistance.

§ 108-73.13. State Fund for Medical Assistance created; tax levy for counties' shares.—For the purpose of providing medical assistance and for the administration of an effective medical assistance program in North Carolina, the State Board of Public Welfare is hereby authorized and empowered to establish from federal, State and county appropriations available for the purpose a fund to be known as the State Fund for Medical Assistance, and to adopt rules and regulations under which payments are to be made out of said Fund in accordance with the provisions of this part. The nonfederal share may be divided between the State and the counties, in a manner consistent with the provisions of the federal Social Security Act, except that the share allocated to the counties may not exceed the share allocated to the State. If a portion of the nonfederal share is allocated to the counties, the boards of county commissioners of the several counties shall levy, impose and collect the taxes required for the special purpose of medical assistance as provided in this part, in an amount sufficient to cover each county's share of medical assistance. (1965, c. 1173, s. 1.)

Editor's Note.—Section 1, c. 1173, Session Laws 1965, repeals parts 4, 4A and 4B of this article, and substitutes therefor a new part 4 entitled "Medical Assistance," consisting of this and the following two sections. Section 4 of c. 1173, Session Laws 1965, provides: "This act shall become effective only in the event that the federal Social Security Act is amended by Congress to provide a program of grants to states for medical assistance, and shall then only become effective upon the adoption of rules and regulations by the State Board of Public Welfare pursuant to this act, approved by the Governor and the Advisory Budget Commission."

§ 108-73.14. Payments from Fund.—From the Fund established herein, the State Board of Public Welfare may, within appropriations made for this specific purpose, pay or cause to be paid all or part of the cost of medical and other remedial care for any eligible person, when it is essential to the health and welfare of such person that such care be provided, and when the total resources of such person are not sufficient to provide the necessary care. Payments for the cost of hospitalization, including in-patient and out-patient services, shall be made only to hospitals licensed by the North Carolina Medical Care Commission, or licensed or approved according to the laws of another state. (1965, c. 1173, s. 1.)

§ 108-73.15. Acceptance of federal grants; right to choose provider of care or service.—All of the provisions of the federal Social Security Act, as amended, providing grants to the states for medical assistance, are hereby accepted and adopted, and the provisions of this article shall be liberally construed in relation to the said federal Social Security Act, so that the intent to comply therewith shall be made effectual. Nothing in this part or the regulations made pursuant hereto shall be construed to deprive a recipient of assistance of the right to choose the licensed provider of the care or service made available under this part within the provision of the federal Social Security Law. (1965, c. 1173, s. 1.)

Part 4. Hospitalization and Other Care of Assistance Recipients.

§ 108-73.13. Establishment of Fund.—In order to achieve economy and efficiency in the hospitalization of assistance recipients the State Board of Public Welfare is authorized and empowered to establish a special fund for the hospitalization of recipients of old age assistance, aid to dependent children, and aid to the permanently and totally disabled, and to establish reasonable rules and regulations necessary to carry out the provisions of part 4 of this article. The fund shall be known as "The State Fund for the Hospitalization of Assistance Recipients," hereinafter referred to as the Fund. Disbursement from the Fund shall be made only for the purpose of providing necessary hospital care including in-patient and out-patient services, and for the purpose of providing necessary drugs for recipients, and their spouses when such spouses are included in the assistance budget group, of old age assistance, aid to dependent children, and aid to the permanently and totally disabled. Any balance in the Fund at the end of any fiscal year and at the end of any biennium shall remain in the Fund and shall not expire or revert. (1955, c. 969; 1963, c. 599, s. 3.)

Editor's Note. — The 1963 amendment inserted the words "including in-patient and out-patient services, and for the purpose of providing necessary drugs" in the third sentence.

Repeal of Part.—Section 1, c. 1173, Session Laws 1965, repeals parts 4, 4A and 4B of this article and substitutes therefor a new part 4 entitled "Medical Assistance," consisting of §§ 108-73.13 to 108-73.15, which is set out preceding this part. Section 4 of c. 1173, Session Laws 1965, provides: "This act shall become effective only in the event that the federal Social Security Act is amended by Congress to provide a program of grants to states for medical assistance, and shall then only become effective upon the adoption of rules and regulations by the State Board of Public Welfare pursuant to this act, approved by the Governor and the Advisory Budget Commission."

§ 108-73.14. Determination of rate per recipient; payments into Fund.—The Fund shall consist of amounts paid monthly into the Fund on behalf of each recipient of old age assistance, aid to dependent children, and aid to the permanently and totally disabled out of monies appropriated to the State Board of Public Welfare for this purpose; monthly payments for each county for such recipients through deductions made by the State Board of Public Welfare from State funds due the county for assistance purposes; and federal matching funds paid to the State for each assistance category. The rate per recipient of monthly payments into the Fund shall be fixed from time to time by the State Board taking into consideration costs of hospitalization, including in-patient and out-patient services, and cost of drugs, the number of persons covered, the extent of hospitalization and drug needs of such persons, and the availability of State funds. After the recipient rates have been determined, the portion of such rates to be paid from federal matching funds shall be computed. Payment of the balance of such rates shall be borne equally by the State and the several counties. (1955, c. 969; 1963, c. 599, s. 3.)

Editor's Note. — The 1963 amendment inserted in the second sentence the words "including in-patients and out-patient services, and cost of drugs" and the words "and drug needs."

§ 108-73.15. Extent of payment for hospitalization and other care. —Persons eligible as hereinabove provided shall be entitled to have the costs of necessary hospitalization, including in-patient and out-patient services, and the costs of necessary drugs paid out of the Fund, in such amounts, and to the extent and in the manner determined from time to time to be feasible pursuant to the rules and regulations established by the State Board. Such rules and regulations shall be established on the basis of money available for the purpose, the number of assistance recipients, the experience with respect to the incidence of illness, disease, accidents, and other reasons among such recipients, causing them to require hospitalization and the costs thereof, the amounts which recipients require otherwise in order to maintain a subsistence compatible with decency and health, and any other similar factors considered relevant by the State Board. (1955, c. 969; 1963, c. 599, s. 3.)

Editor's Note. — The 1963 amendment inserted in the first sentence the words "including in-patient and out-patient services, and the costs of necessary drugs."

§ 108-73.16. Custody and receipt of funds. — The Treasurer of the State of North Carolina is hereby made ex officio treasurer of "The State Fund for the Hospitalization of Assistance Recipients" herein established. The Fund thus established is hereby made an irrevocable trust and all payments into the Fund are irrevocable except upon repeal of this article as provided in G.S. 108-76. The Treasurer shall keep the Fund in a separate account and shall be responsible therefor on his official bond; and the said Fund shall be protected by proper depository security as are other State funds. The said Fund shall be drawn upon and disbursed as hereinafter provided. (1955, c. 969.)

§ 108-73.17. Disbursement. — Claims for the cost of hospitalization, including in-patient and out-patient services, and for the cost of drugs shall be submitted by the county director of public welfare to the State Board of Public Welfare, in accordance with the rules and regulations of the State Board. Payments from the Fund shall be made only to hospitals licensed by the North Carolina Medical Care Commission, or licensed or approved according to the laws of another state, and to pharmacies, on warrants drawn on "The State Fund for the Hospitalization of Assistance Recipients" upon order of the State Board of Public Welfare evidenced by the signature of the Commissioner of Public Welfare. (1955, c. 969; 1959, c. 180; 1961, c. 186; 1963, c. 599, s. 3.)

Editor's Note.—The 1963 amendment inserted the words "including in-patient and out-patient services, and for the cost of drugs" in the first sentence. It also inserted the words "and to pharmacies" in the second sentence.

§ 108-73.18. Acceptance of federal grants. — The provisions of the federal Social Security Act, relating to grants-in-aid to the State for the hospitalization of public assistance recipients and for other types of medical care, and the benefits thereunder, are hereby accepted and adopted, and the provisions of this article shall be liberally construed in relation to the said Social Security Act, so that the intent to comply therewith shall be made effectual. (1955, c. 969; 1963, c. 599, s. 3.)

Editor's Note. — The 1963 amendment inserted the words "and for other types of medical care."

Cited in State Bd. of Pub. Welfare v. Board of Comm'rs, 262 N.C. 475, 137 S.E.2d 801 (1964).

Part 4A. Hospitalization and Other Care for the Medically Indigent.

§ **108-73.19. Contributions for indigent patients.** — The State Board of Public Welfare, in accordance with the rules and regulations promulgated by the Board, is hereby authorized and empowered to make hospitalization payments, covering in-patient and out-patient services, for eligible medically indigent persons hospitalized in any hospital licensed by the Medical Care Commission or licensed or approved according to the laws of another state, who do not qualify for money payments under old age assistance, aid to dependent children or aid to the permanently and totally disabled. The State Board of Public Welfare is further authorized and empowered to pay for drugs for eligible medically indigent persons who do not qualify for money payments. The payments shall be established on the basis of money available for the purpose, taking into account the availability of federal matching funds and the State funds appropriated for the program, with the nonfederal share to be borne equally by the State and the several counties.

The State Board of Public Welfare shall promulgate rules and regulations for determining the indigency of the persons hospitalized or entitled to drugs and the basis upon which hospitals and pharmacies shall qualify to receive the benefits of this section.

Any unexpended balance remaining from the present annual appropriation for medically indigent patients shall forthwith be transferred from the Medical Care Commission to the State Board of Public Welfare.

All outstanding obligations existing under the rules and regulations of the Medical Care Commission at one dollar and a half ($1.50) per day for medically indigent patients shall be transferred from the Medical Care Commission to the State Board of Public Welfare for payment. (1961, c. 138, s. 2; 1963, c. 599, s. 4.)

Editor's Note. — The 1963 amendment inserted the words "covering in-patient and out-patient services" near the beginning of the first paragraph. It also inserted the second sentence of the first paragraph and the words "or entitled to drugs" and "and pharmacies" in the second paragraph.

Repeal of Part.—See note to the second section numbered § 108-73.13, above.

§ **108-73.20. Acceptance of federal grants.**—The State Board of Public Welfare is hereby authorized to accept any federal matching funds which may be made available to the State by the federal government for the purposes set forth under the provisions of this part. (1961, c. 138, s. 2.)

Part 4B. Medical Assistance for the Aged.

§ **108-73.21. State Fund for Medical Assistance for the Aged created.**—For the purpose of providing medical assistance for the aged, over and beyond the medical assistance provided by part 4 and part 4A of this article, and for the administration of an effective medical assistance program for the aged in North Carolina, the State Board of Public Welfare is hereby authorized and empowered to establish from federal, State and county appropriations available for the purpose, a fund to be known as the State Fund for Medical Assistance for the Aged, and to adopt rules and regulations under which payments are to be made out of said Fund in accordance with the provisions of this part. The nonfederal share shall be equally divided between the State and the counties, except as provided in G.S. 108-73, as amended. Annually, at the time other taxes are levied in each of the several counties of the State, there shall be levied and imposed a tax sufficient to cover the county's share and full authority is hereby given to the boards of county commissioners of the several counties to levy, impose and collect the taxes required for the special purpose of medical assistance for the aged as provided in this part. (1963, c. 599, s. 1.)

Repeal of Part.—See note to the second section numbered § 108-73.13, above.

§ 108-73.22. Payments. — From the Fund established herein, the State Board of Public Welfare may, within appropriations made for this specific purpose, pay or cause to be paid all or part of the cost of medical services for any person sixty-five years of age and over, when it is essential to the health and welfare of such aged person that medical services be provided, and when the total resources of such person are not sufficient to provide the necessary medical services. (1963, c. 599, s. 1.)

§ 108-73.23. Acceptance of federal grants.—All of the provisions of the federal Social Security Act, as amended, providing grants to the states for hospitalization, medical assistance and other remedial care for needy aged persons, are hereby accepted and adopted, and the State Board of Public Welfare is hereby authorized and empowered to accept grants under the provisions of said act which are most beneficial to the State for providing medical assistance for aged persons as defined in said federal Social Security Act. Nothing in this part or the regulations made pursuant hereto shall be construed to deprive a recipient of assistance of the right to choose the provider of the care or service made available under this part within the provisions of the federal Social Security Law. (1963, c. 599, s. 1.)

General Provisions.

§ 108-74. Organization; appointment of agencies; employment.—The State Board shall have opportunity to set up such organization as may in its judgment be deemed proper to secure the economic and efficient administration of this article, not inconsistent with other provisions hereof. It may delegate such powers as may be lawfully delegated to such persons and agencies as will expedite the prompt execution of the duties of the Board in ministerial matters; may appoint auditors, accountants, supervisors, and deputies, and other agents to aid it in its supervisory powers and to secure the proper care of the funds and administration of the law; and may employ clerical and other assistance. Except as herein otherwise provided, the salaries and compensation paid to the personnel shall be fixed by the Budget Commission, and the number of salaried persons and employees shall be subject to the approval of the Budget Commission. The organization shall likewise be such as to meet the approval of the federal Social Security Authority in charge of the old age assistance.

The Board is further authorized to pay ordinary expenses incident to administration, and to fix and pay per diem compensation to members of boards to whom new duties have been given and of whom additional service is required under this article. Such compensation shall be subject to the approval of the Director of the Budget. (1937, c. 288, s. 63.)

§ 108-74.1. Rules and regulations of Board subject to approval of Director of Budget and Advisory Budget Commission. — All rules and regulations made by the State Board of Public Welfare to determine eligibility for grants from appropriations made in the Biennial Appropriations Act for Old Age Assistance, Aid to Dependent Children, and Aid to the Permanently and Totally Disabled, or to determine the amount of any such grant, shall be subject to the approval of the Director of the Budget and the Advisory Budget Commission. (1959, c. 1254.)

§ 108-75. County funds; how provided.—Wherever in this article provisions are made requiring the several counties to annually levy or annually levy and collect taxes to provide for such amounts as such counties are required to pay for old age assistance, or for aid to dependent children, or for the cost of administration, such provisions shall be construed to mean that such counties may provide the sums to be raised by them from any sources of county income or revenue (including borrowing in anticipation of collection of taxes) which may be available for use for such purposes by such counties. (1937, c. 288, s. 63½.)

§ **108-75.1. Combined tax levy.**—In lieu of levying separate special taxes for old age assistance, aid to dependent children, aid to the permanently and totally disabled, aid to the blind and welfare administration, the board of county commissioners of any county may combine any or all of these special taxes into a consolidated public assistance tax, which when combined with other available funds as provided in G.S. 108-75 shall be sufficient to meet the appropriations for these various programs and purposes: Provided that the appropriations and expenditures for each of these various programs and purposes shall be separately stated and accounted for. (1963, c. 866.)

§ **108-76. Termination of federal aid.**—If for any reason there should be a termination of federal aid as anticipated in this article, then and in that event this article shall be ipso facto repealed and rendered null and void: Provided, however, such repeal shall not become or be in force unless and until the Governor of the State of North Carolina has issued a proclamation, duly attested by the Secretary of State of the State of North Carolina, to the effect that there has been a termination of such federal aid. In the event that this article should be ipso facto repealed as herein provided, the State funds on hand shall be converted into the general fund of the State for such use as may be authorized by the Director of the Budget, and the county funds accumulated by the provisions of this article in the respective counties of the State shall be converted into the general fund of such counties for such use as may be authorized by the county commissioners. (1937, c. 288, s. 63½-A.)

§ **108-76.1. Diversion of aid or violation of article a misdemeanor.**—If any person wilfully violates any provision of this article or diverts any assistance granted under the provisions of this article to any use other than that for which the assistance was granted, such person shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned or both in the discretion of the court. (1959, c. 1210, s. 2.)

Cross Reference. — See § 108-76.2 and note thereto.

Editor's Note.—Section 5 of the act inserting this section provides that it shall not apply to the counties of Gaston and Mecklenburg.

§ **108-76.2. Further action prohibited upon termination of federal aid.**—In the event that the Secretary of Health, Education, and Welfare notifies the State Board of Public Welfare that further payments of federal funds to the State of North Carolina for aid to dependent children, or for any other public assistance program, will not be made because any procedure provided by this act is prohibited by the Social Security Act, as amended, or by other applicable federal statutes, or by proper and authorized regulations having the force and effect of law, then and in that event no person or agency shall take any further action pursuant to such procedure. (1959, c. 1210, s. 4½.)

Editor's Note.—Section 5 of the act inserting this section provides that it shall not apply to the counties of Gaston and Mecklenburg.

The words "this act" as used in this section refer to Session Laws 1959, c. 1210. For other sections of that act, see §§ 15-155.1 to 15-155.3, 108-57, 108-76.1.

§ **108-76.3. Personal representatives for recipients of assistance; appointment authorized; procedure; removal; costs; appeals.**—If any otherwise qualified applicant for or recipient of old age assistance, aid to the permanently and totally disabled, or general assistance, or payee in the case of aid to dependent children, is or shall become unable to manage the assistance payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, or, in the case of aid to dependent children, the payment is not being used for the children, a petition may be filed by the director of public welfare before the appropriate court under § 108-76.4, in the form of a verified written application for the appointment of a personal representative for the purpose of receiving and managing public assistance payments for any such recipient or payee, which application shall allege one or more of the above grounds for the legal appointment of such personal representative.

The court shall summarily order a hearing on the petition and shall cause the applicant or recipient to be notified at least five days in advance of the time and place for the hearing. Findings of fact shall be made by the court without a jury, and if the court shall find that the applicant for or recipient of old age or general assistance or aid to the permanently and totally disabled or the payee, in the case of aid to dependent children, is unable to manage the assistance payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, or, in the case of aid to dependent children, the payment is not being used for the children, the court may thereupon enter an order embracing said findings and appointing some responsible person as personal representative of the applicant or recipient, or of the payee in the case of aid to dependent children, for the purposes set forth herein. The personal representative so appointed shall serve with or without bond, in the discretion of the court, and without compensation. He will be responsible for receiving the monthly assistance payment and using the proceeds of such payment for the benefit of the recipient of old age or general assistance or aid to the permanently and totally disabled, or in the case of aid to dependent children, for the application of the payment to the best interest of the children. Such personal representative shall be responsible to the court for the faithful discharge of the duties of his trust. The court may consider the recommendation of the director of public welfare in the selection of a suitable person for appointment as personal representative for the limited purposes of §§ 108-76.3 to 108-76.5. The personal representative so appointed may be removed by the court, and the proceeding dismissed, or another suitable personal representative appointed. All costs of court with respect to any such proceedings shall be waived.

From the order of the court appointing or removing such personal representative, an appeal may be had to the judge of superior court who shall hear the matter de novo without a jury. (1959, c. 1239, s. 1; 1961, c. 186.)

§ 108-76.4. Courts for purposes of §§ 108-76.3 to 108-76.5; records.—For the purposes of §§ 108-76.3 to 108-76.5 the court may be either a domestic relations court established pursuant to article 13, chapter 7, General Statutes, or the clerk of the superior court in the county having responsibility for the administration of the particular public assistance payments. The court may, for the purposes of §§ 108-76.3 to 108-76.5, direct the superintendent of public welfare to maintain records pertaining to all aspects of any personal representative proceeding, which the court may adopt as the court's record and in lieu of the maintenance of separate records by the court. (1959, c. 1239, s. 2.)

Editor's Note.—Session Laws 1961, c. 186, changed the title of the county superintendent of public welfare to county director of public welfare.

§ 108-76.5. Findings under § 108-76.3 not competent as evidence in other proceedings.—The findings of fact under the provisions of § 108-76.3 herein shall not be competent as evidence in any case or proceeding dealing with any subject matter other than provided in §§ 108-76.3 to 108-76.5. (1959, c. 1239, s. 3.)

§ 108-76.6. Protective payments in certain aid to dependent children cases.—In addition to the use of personal representatives as authorized in G.S. 108-76.3 through G.S. 108-76.5, the State Board of Public Welfare is to adopt rules and regulations providing for the use of protective payments to the extent authorized by Title IV of the federal Social Security Act, when it is determined that the payee in an aid to dependent children case fails to use the assistance funds for the purpose for which they were intended. (1963, c. 380.)

ARTICLE 4.

Home Boarding Fund.

§ **108-77. State Boarding Home Fund created.** — The General Assembly of North Carolina shall make appropriations to the State Board of Public Welfare for the purpose of providing aid for needy, dependent, and delinquent children and paying their necessary subsistence in boarding homes. The State Board of Public Welfare, from said appropriations, shall maintain a fund to be known and designated as the State Boarding Home Fund, from which said Fund there shall be paid, in accordance with the rules and regulations adopted by the State Board of Public Welfare, the amount necessary to provide homes for the needy, dependent, and delinquent children coming within the eligibility provisions of this article. (1937, c. 135, s. 1; 1955, c. 1044, s. 1; 1957, c. 100, s. 1.)

§ **108-78. No benefits to children otherwise provided for.**—No needy or dependent child shall be eligible for the benefits provided in this article if such child is eligible for benefits provided by part 2 of article 3 entitled "Aid to Dependent Children." (1937, c. 135, s. 2.)

§ **108-79. Administration of Fund by State Board of Public Welfare.**—From the Fund so provided, the State Board of Public Welfare may provide for payment of the necessary costs of keeping in suitable boarding homes, needy, dependent, and delinquent children, including the children committed to the State Board of Public Welfare under the provisions of § 110-29, provided such children so committed to such State Board of Public Welfare are ineligible for assistance under the "Aid to Dependent Children Act" hereinbefore referred to. Said Fund shall be expended under the rules and regulations adopted by the State Board of Public Welfare. (1937, c. 135, s. 3; 1955, c. 1044, s. 2; 1957, c. 100, s. 1.)

ARTICLE 4A.

State Boarding Fund for the Aged and Infirm.

§ **108-79.1. State Boarding Fund established.**—The State Board of Public Welfare is hereby authorized, empowered, and directed to establish a fund to be known as the State Boarding Fund for the aged and infirm, and to adopt rules and regulations under which payments are to be made out of the Fund in accordance with the provisions of this article. (1951, c. 90.)

§ **108-79.2. Payments.** — From the Fund herein established, the State Board of Public Welfare may pay all or part of the cost of maintaining in a duly licensed boarding home any aged or infirm adult person

(1) When the State deems it essential to the health or welfare of such person that such boarding home care be provided; and

(2) When such person is otherwise eligible to receive public assistance under the old age assistance program, aid to the permanently and totally disabled program, or the general assistance program; and

(3) When the total resources of such person, including any public assistance grants, are not sufficient to provide care in a suitable licensed boarding home. (1951, c. 90.)

§ **108-79.3. Benefits may be in addition to other aid.**—Payments may be made from the Fund to or for the benefit of a person whether or not such person receives assistance from the State or county, but no payment shall be made from the Fund for any purpose except for necessary costs of domiciliary care in a licensed home. (1951, c. 90.)

ARTICLE 5.

Regulation of Organizations and Individuals Soliciting Public Alms.

§ **108-80. Regulation of solicitation of public aid for charitable, etc., purposes.**—Except as hereinafter provided in G.S. 108-84, no person, organization, corporation, institution, association, agency or copartnership except in accordance with provisions of this article shall solicit the public whether by mail, or through agents or representatives or other means for donations, gifts or subscriptions of money and/or of gifts of goods, wares, merchandise or other things of value or to sell or offer for sale or distribute to the public any thing or object whatever to raise money or to sell memberships, periodicals, books or advertising space or to secure or attempt to secure money or donations or other property by promoting any public bazaar, sale, entertainment or exhibition or by any similar means for any charitable, benevolent, health, educational, religious, patriotic or other similar public cause or for the purpose of relieving suffering of animals unless the solicitation is authorized by and the money or other goods or property is to be given to an organization, corporation, institution, association, agency or copartnership holding a valid license for such purpose from the State Board of Public Welfare, issued as herein provided. (1939, c. 144, s. 1; 1947, c. 572.)

Editor's Note.—For comment on this article prior to its revision in 1947, see 17 N.C.L. Rev. 333.

§ **108-81. Application for license to solicit public aid.**—Any person, organization, corporation, institution, association, agency, or copartnership wishing to secure a license from the State Board of Public Welfare for the purpose of soliciting the public for any of the aforenamed causes shall file a written application with the State Board of Public Welfare on a form furnished by the said Board setting forth proof of the worthiness of the cause, chartered responsibility, the existence of an adequate and responsible governing board to administer receipts and disbursements of funds, goods, or other property sought, the need of public solicitation, proposed use of funds sought, and a verified report of the operation of such organization, corporation, institution, association, agency or copartnership for a fiscal period determined by the said State Board, said verified report to show reserve funds and endowment funds as well as receipts and disbursements. (1939, c. 144, s. 1; 1947, c. 572.)

§ **108-82. Issuance of license by State Board of Public Welfare.**—If the State Board of Public Welfare after full investigation and careful study of the purpose and functioning of an organization, corporation, institution, association, agency, or copartnership filing an application for a license to solicit deems such organization, corporation, institution, association, agency or copartnership a proper one and not inimical to the public welfare and its proposed solicitations to be truly for the purpose set forth in its application and provided for in this article, it shall issue to such organization, corporation, institution, association, agency or copartnership a license to solicit for its purposes and program for a period not to exceed one year, unless revoked for cause.

The State Board of Public Welfare shall not issue a license to solicit to any such organization, corporation, institution, association, agency or copartnership which pays or agrees to pay to any individual, corporation, copartnership or association an unreasonable or exorbitant amount of the funds collected as compensation.

In the event the said Board refuses to issue said license, the organization, corporation, institution, association, agency or copartnership shall be entitled to a hearing before said Board provided written request therefor is made within fifteen days after notice of refusal is delivered or mailed to the applicant. All such hearings shall be held in the offices of said Board and shall be open to the public. Decisions of said Board shall be mailed to the interested parties within ten days after the hearing.

The State Board of Public Welfare before granting or refusing a license as herein provided shall call upon the State Commission for the Blind, the Division of Vocational Rehabilitation and other divisions of the State Department of Public Instruction, the Bureau of Labor for the Deaf, and the State Board of Health for advice in any situation or cause in which any of the several State agencies named has an interest or responsibility. (1939, c. 144, s. 1; 1947, c. 572.)

§ 108-83. Solicitors and collectors must have evidence of authority and show same on request.—No person shall solicit or collect any contribution in money or other property for any of the purposes set forth in this article without a written authorization, pledge card, receipt form, or other evidence of authority to solicit for a duly licensed organization, corporation, institution, association, agency, or copartnership for which the donation or contribution is made and said evidence of authority must be shown to any person on request. Said evidence of authority must be provided by the organization, corporation, institution, association, agency or copartnership for which the donation or contribution is solicited or by the agency through which the donation or contribution is collected and distributed. (1939, c. 144, s. 2; 1947, c. 572.)

§ 108-84. Organizations, etc., exempted from article. — The provisions of this article shall not apply to any solicitation or appeal made by any church, or religious organization, school or college, fraternal or patriotic organization, or civic club located in this State when such appeal or solicitation is confined to its membership nor shall the provisions of this article apply to any locally indigenous organization, institution, association or agency having its own office, managing board, committee or trustees or chief executive offices located in or residing in a city or county from publicly soliciting donations or contributions within a city and the county or counties in which said city is located or within the county in which such an organization, institution, association or agency is located and operates; provided that nothing in this article shall apply to any solicitation or appeal by any church for the construction, upkeep, or maintenance of the church and its established organization or for the support of its clergy; provided further, that nothing in this article shall apply to any solicitation or appeal by any college holding membership in the North Carolina College Conference, and provided further, that nothing in this article shall apply to any solicitation or appeal by any nonpublic high school which offers at least the minimum high school course of study prescribed by the State Board of Education and which is accredited by the State Department of Public Instruction. (1939, c. 144, s. 2a; 1947, c. 572; 1963, c. 110; 1965, c. 990.)

Editor's Note. — The 1963 amendment added the next to last proviso.

The 1965 amendment added the last proviso.

§ 108-85. Regulation and licensing of solicitation of alms for individual livelihood.—It shall be unlawful for an individual to engage in the business of soliciting alms or begging charity for his or her own livelihood or for the livelihood of another individual upon the streets or highways of this State or through door to door solicitations without first securing a license to solicit for this purpose from the State Board of Public Welfare.

Any individual desiring to engage in the business of soliciting alms or begging charity for his or her own livelihood or for the livelihood of another individual as set forth in the first paragraph of this section shall file a written application for a license on a form or forms furnished by the said Board, setting forth his or her own true name and address, his or her correct address or addresses for the past five years, the purpose for which he or she desires to solicit alms, the reason why public solicitation is considered a necessary means to obtain a livelihood or relief from suffering rather than the pursuit of a legitimate trade or the acceptance of benefits provided through the social security measures and funds administered by the federal, State and county governments and any other information which the said Board may deem necessary to carry out the provisions of this article. A copy of the license must be carried by the solicitor while soliciting and must be shown upon request.

The carrying and offering for sale of merchandise by the individual soliciting alms or begging charity shall not exempt the individual so soliciting from the provisions of this article. The State Board of Public Welfare shall call upon the several State agencies named in § 108-82 for advice in issuing a license to an individual in accordance with the provisions of this article. (1947, c. 572.)

§ 108-86. Punishment for violation of article; misapplication of funds collected.—Any person who, or any organization, corporation, institution, association, agency or copartnership which violates any of the provisions of this article or solicits donations and contributions from the public without first applying for and obtaining a license as herein provided shall be guilty of a misdemeanor, and upon conviction shall be punished in case of an organization, corporation, institution, association, agency or copartnership by a fine of not more than one thousand dollars ($1,000.00) ; in the case of an individual the punishment shall be that provided for a misdemeanor.

Any person who, or organization, corporation, institution, association, agency or copartnership which, after having conducted a solicitation campaign and obtained funds from such solicitation shall willfully convert or misapply any of said funds from the purposes for which solicited as set out in the application for license to solicit shall be guilty of a felony and shall be punished in the discretion of the court. (1939, c. 144, s. 3; 1947, c. 572.)

§§ 108-87 to 108-90: Omitted by Session Laws 1947, c. 572.

Editor's Note.—In rewriting this article Session Laws 1947, c. 572, omitted §§ 108-87 through 108-90, which probably amounts to an implied repeal of these sections. Sections 108-84 and 108-86 now cover the subject matter of the omitted sections with the exception of § 108-89, which repealed §§ 14-336 through 14-338 so far as in direct conflict with the article.

Chapter 109.

Bonds.

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109-37. Officer unlawfully detaining money liable for damages.
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109-39. Officer liable for negligence in collecting debt.

ARTICLE 1.

Official Bonds.

§ 109-1. Irregularities not to invalidate. — When any instrument is taken by or received under the sanction of the board of county commissioners, or by any person or persons acting under or in virtue of any public authority, purporting to be a bond executed to the State for the performance of any duty belonging to any office or appointment, such instrument, notwithstanding any irregularity or invalidity in the conferring of the office or making of the appointment, or any variance in the penalty or condition of the instrument from the provision prescribed by law, shall be valid and may be put in suit in the name of the State for the benefit of the person injured by a breach of the condition thereof, in the same manner as if the office had been duly conferred or the appointment duly made, and as if the penalty and condition of the instrument had conformed to the provisions of law: Provided, that no action shall be sustained thereon because of a breach of any condition thereof or any part of the condition thereof which is contrary to law. (1842, c. 61; R. C., c. 78, s. 9; 1869-70, c. 169, s. 16; Code, s. 1891; Rev., s. 279; C. S., s. 324.)

In General.—This section does not have the effect of introducing into an official bond provisions which are not, but ought to have been inserted in the conditions, so as to extend the liabilities of the obligors; but the purpose is to cure certain defects and irregularities in conferring the office and accepting the instrument, and to maintain its validity as an official undertaking, as far as it goes, notwithstanding the penalty or condition may vary from those prescribed by law. State ex rel. Jordan v. Pool, 27 N.C. 105 (1844); State ex rel. Merrill v. McMinn, 29 N.C. 345 (1847); State ex rel. Murray v. Jones, 29 N.C. 359 (1847); Commissioners of Wake County v. Magnin, 86 N.C. 286 (1882). See also Midgett v. Nelson, 214 N.C. 396, 199 S.E. 393 (1938).

For article concerning contracts and referring generally to this section, see 13 N.C.L. Rev. 65.

Retroactive Operation.—The section had a retroactive operation. State ex rel. Jordan v. Pool, 27 N.C. 105 (1844); State ex rel. Murray v. Jones, 29 N.C. 359 (1847).

Official bonds should be liberally construed and any variance in the condition of such an instrument from the provisions prescribed by the law will usually be treated as an irregularity, in view of this section, but this principle does not abrogate the freedom of contract. City of Washington v. Trust Co., 205 N.C. 382, 171 S.E. 438 (1933).

Nor does this rule preclude the parties from contracting in the bond for liability for a shorter period than the official term of office of the principal. City of Washington v. Trust Co., 205 N.C. 382, 171 S.E. 438 (1933).

Validity as Common-Law or Voluntary Bonds. — A statutory bond, not duly executed, or not conditioned as required by statute, may be sustained as a common-law or voluntary bond. Chambers v. Witherspoon, 10 N.C. 42 (1824); Justices of Cumberland v. Armstrong, 14 N.C. 284 (1831); Justices of Curritack v. Dozier, 14 N.C. 287 (1831); Williams v. Ehringhaus, 14 N.C. 297 (1831); Vanhook v. Barnett, 15 N.C. 268 (1833); Davis v. Somerville, 15 N.C. 382 (1834); State ex rel. Davis v. McAlpin, 26 N.C. 140 (1843); Reid v. Humphreys, 52 N.C. 258 (1859).

County A.B.C. Board as Obligee.—The naming of county A.B.C. board as obligee in bond, rather than State, works no limitation of its character as official bond and affords no escape from its obligations as such. Jordan v. Harris, 225 N.C. 763, 36 S.E.2d 270 (1945).

Name of Constable Omitted. — Where a constable's official bond was signed by the obligors but a blank was left for the name of the constable, the omission was not cured by this section. Grier v. Hill, 51 N.C. 572 (1859).

Failure to Register Constable's Bond.—An irregularity, such as want of registration, will not, under this section, invalidate a constable's bond. Warren v. Boyd, 120 N.C. 56, 26 S.E. 700 (1897).

Failure to Name Conditions in Sheriff's Bond. — Failure to name conditions required by § 162-8, relating to sheriff's bonds, will not, under this section, invalidate the bond given. State ex rel. Bd. of Comm'rs v. Sutton, 120 N.C. 298, 26 S.E. 920 (1897).

Mistake in Name of Ward in Guardian's Bond.—Where, in the order of a county court appointing a guardian, the name Margaret is by mistake inserted as that of the ward instead of Miranda, a bond taken according to the proper requisitions, with the right name recited, will, under the operation of this section, be sustained as an official bond. Shuster v. Perkins, 46 N.C. 325 (1854).

No Penalty Named in Guardian's Bond.—Where defendants signed a bond intending to make it the guardian bond of their principal, but there was no penalty named in the bond the same being filled in subsequent to the signature, it was held that this section does not apply, as it is confined to bonds wherein the amount of penalty varies from that fixed by law, being either more or less than the amount. Rollins v. Ebbs, 137 N.C. 355, 49 S.E. 341 (1904); Rollins v. Ebbs, 138 N.C. 140, 50 S.E. 577 (1905).

Who May Sue. — The chairman of a board of fence commissioners, although not named in the tax collector's bond, may bring suit on the same under this section, when the latter fails to pay the money collected for the erection of fences. Speight v. Staton, 104 N.C. 44, 10 S.E. 86 (1889).

Where a register of deeds issued a license for the marriage of a girl under eighteen without the consent of her father, the father is the person injured within the meaning of this section. Joyner v. Roberts, 112 N.C. 111, 16 S.E. 917 (1893).

Cited in Barnes v. Lewis, 73 N.C. 138 (1875).

§ 109-2. Penalty for officer acting without bond.—Every person or officer of whom an official bond is required, who presumes to discharge any duty of his office before executing such bond in the manner prescribed by law, is liable to a forfeiture of five hundred dollars to the use of the State for each attempt so to exercise his office. (R. C., c. 78, s. 8; Code, s. 1882; Rev., s. 278; C. S., s. 325.)

Quoted in Langley v. Taylor, 245 N.C. 59, 95 S.E.2d 115 (1956).

Stated in Moffitt v. Davis, 205 N.C. 565, 172 S.E. 317 (1934).

§ 109-3. Condition and terms of official bonds.—Every clerk, treasurer, sheriff, coroner, register of deeds, surveyor, and every other officer of the several counties who is required by law to give a bond for the faithful performance of the duties of his office, shall give a bond for the term of the office to which such officer is chosen. (1869-70, c. 169; 1876-7, c. 275, s. 5; Code, s. 1874; 1895, c. 207, s. 4; 1899, c. 54, s. 54; Rev., s. 308; C. S., s. 326.)

Quoted in part in State ex rel. Cain v. Corbett, 235 N.C. 33, 69 S.E.2d 20 (1952).

Stated in Moffitt v. Davis, 205 N.C. 565, 172 S.E. 317 (1934).

§ 109-4. When county may pay premiums on bonds. — In all cases where the officers or any of them named in § 109-3 are required to give a bond, the county commissioners of the county in which said officer or officers are elected are authorized and empowered to pay the premiums on the bonds of any and all such officer or officers. The board of commissioners of any county are further authorized and empowered to require individual or blanket bonds for any or all assistants, deputies or other persons regularly employed in the offices of any such county officer or officers, such bond or bonds to be conditioned upon faithful performance of duty, and, in the event of such requirement, to pay the premiums on such individual or blanket bonds. (1937, c. 440; 1953, c. 799.)

Local Modification.—Currituck: 1943, c. 269.

§ 109-5. Annual examination of bonds; security strengthened.—The bonds of the officers named in § 109-3 shall be carefully examined on the first Monday in December of every year, and if it appears that the security has been impaired, or for any cause become insufficient to cover the amount of money or property or to secure the faithful performance of the duties of the office, then the bond shall be renewed or strengthened, the insufficient security increased within the limits prescribed by law, and the impaired security shall be made good; but no renewal, or strengthening, or additional security shall increase the penalty of said bond beyond the limits prescribed for the term of office. (1869-70, c. 169; 1876-7, c. 275, s. 5; Code, s. 1874; 1895, c. 207, s. 4; 1899, c. 54, s. 54; Rev., s. 308; C. S., s. 327.)

Cross References. — As to amount of bonds of clerks of the superior courts, see § 2-3; as to amount of bond of county treasurers, see § 155-2; as to amount of bond of sheriffs, see § 162-8; as to amount of bond of coroners, see § 152-3; as to amount of bond of constables, see § 151-3; as to amount of bond of registers of deeds, see § 161-4.

§ 109-6. Effect of failure to renew bond. — Upon the failure of any such officer to make such renewal of his bond, it is the duty of the board of commissioners, by an order to be entered of record, to declare his office vacant, and to proceed forthwith to appoint a successor, if the power of filling the vacancy in the particular case is vested in the board of commissioners; but if otherwise, the said board shall immediately inform the proper person having the power of appointment of the fact of such vacancy. (1869-70, c. 169, s. 2; Code, s. 1875; Rev., s. 309; C. S., s. 328.)

§ **109-7. Justification of sureties.**—Every surety on an official bond required by law to be taken or renewed and approved by the board of commissioners shall take and subscribe an oath before the chairman of the board or some person authorized by law to administer an oath, that he is worth a certain sum (which shall be not less than one thousand dollars) over and above all his debts and liabilities and his homestead and personal property exemptions, and the sum thus sworn to shall in no case be less in the aggregate than the penalty of the bond. But nothing herein shall be construed to abridge the power of the said board of commissioners to require the personal presence of any such surety before the board when the bond is offered, or at such subsequent time as the board may fix, for examination as to his financial condition or other qualifications as surety. (1869-70, c. 169, s. 3; 1879, c. 207; Code, s. 1876; 1889, c. 7; 1891, c. 385; 1901, c. 32; Rev., s. 310; C. S., s. 329.)

Purpose — Contribution. — The intendment of this section was to provide a statement under oath to show the solvency of the sureties and afford information to the county commissioners under like sanction that the aggregate amount of the bond equaled the penalty required, and does not affect the doctrine of contribution as it relates to the rights of the sureties to contribution between themselves. Board of Comm'rs v. Dorsett, 151 N.C. 307, 66 S.E. 132 (1909).

Cited in State ex rel. Cole v. Patterson, 97 N.C. 360, 2 S.E. 262 (1887).

§ **109-8. Compelling justification before judge; effect of failure.**—When oath is made before any judge of the superior court by five respectable citizens of any county within his district that after diligent inquiry made they verily believe that the bond of any officer of such county, which has been accepted by the board of commissioners, is insufficient either in the amount of the penalty or in the ability of the sureties, it is the duty of such judge to cause a notice to be served upon such officer requiring him to appear at some stated time and place and justify his bond by evidence other than that of himself or his sureties. If this evidence so produced fails to satisfy the judge that the bond is sufficient, both in amount and the ability of the sureties, he shall give time to the officer not exceeding twenty days, to give another bond, fixing the amount of the new bond, when there is a deficiency in that particular. And upon failure of the said officer to give a good bond to the satisfaction of the judge within the twenty days, the judge shall declare the office vacant, and if the appointment be with himself, he shall immediately proceed to fill the vacancy; and if not, he shall notify the persons having the appointing power that they may proceed as aforesaid. (1874-5, c. 120; Code, s. 1885; Rev., s. 316; C. S., s. 330.)

Cited in Mitchell v. Kilburn, 74 N.C. 483 (1876).

§ **109-9. Successor bonded; official bonds considered liabilities.**—The person so appointed shall give bond before the judge, and the bond so given shall in all respects be subject to the requirements of the law in relation to official bonds; and all official bonds shall be considered debts and liabilities within the meaning of § 109-7. (1874-5, c. 120, s. 2; Code, s. 1886; Rev., s. 317; C. S., s. 331.)

§ **109-10. Judge to file statement of proceedings with commissioners.**—When a vacancy is declared by the judge, he shall file a written statement of all his proceedings with the clerk of the board of commissioners, to be recorded by him. (1874-5, c. 120, s. 3; Code, s. 1887; Rev., s. 318; C. S., s. 332.)

§ **109-11. Approval, acknowledgment and custody of bonds.**—The approval of all official bonds taken or renewed by the board of commissioners shall be recorded by their clerk. Every such bond shall be acknowledged by the parties thereto or proved by a subscribing witness, before the chairman of the board of commissioners, or before the clerk of the superior court, registered in the register's office in a separate book to be kept for the registration of official bonds, and the original bond, with the approval of the commissioners endorsed thereon and certified by their chairman, shall be deposited with the clerk of the superior court, except the bond of said clerk, which shall be deposited with the register of deeds, for safekeeping. Provided that an official bond executed as surety by a surety company authorized to do business in this State need not be acknowledged upon behalf of the surety when such bond is executed under seal in the name of the surety by an agent or attorney in fact by authority of a power of attorney duly recorded in the office of the register of deeds of such county and such bond may be recorded by the register of deeds without an order of probate entered by the clerk of the superior court. (1869-70, c. 169, s. 4; 1879, c. 207, s. 2; Code, s. 1877; Rev., s. 311; C. S., s. 333; 1957, c. 1011.)

§ **109-12. Clerk records vote approving bond; penalty for neglect.**—It is the duty of the clerk of the board of commissioners to record in the proceedings of the board the names of those commissioners who are present at the time of the approval of any official bond, and who vote for such approval. Every clerk neglecting to make such record, besides other punishment, shall forfeit his office. Any commissioner may cause his written dissent to be entered on the records of the board. (1790, c. 327, P. R.; 1809, c. 777, P. R.; R. C., c. 78, s. 7; 1869-70, c. 169, s. 8; Code, s. 1881; Rev., s. 314; C. S., s. 336.)

Editor's Note. — This section serves to show the light in which individual responsibility is regarded by the legislature. See Rawls v. Deans, 11 N.C. 299 (1826).

§ **109-13. When commissioner liable as surety.**—Every commissioner who approves an official bond, which he knows to be, or which by reasonable diligence he could have discovered to have been, insufficient in the penal sum, or in the security thereof, shall be liable as if he were a surety thereto, and may be sued accordingly by any person having a cause of action on said bond. (1869-70, c. 169, s. 6; Code, s. 1879; Rev., s. 313; C. S., s. 335.)

Supplements § 162-12. — This section supplements and somewhat extends the provision of § 162-12, relating to the liability of sureties on a sheriff's bond. Hudson v. McArthur, 152 N.C. 445, 67 S.E. 995 (1910).

Liable to All Persons Injured. — Construing this section and § 153-9 together, it is held that the county commissioners may be held individually liable by a person sustaining loss by reason of their failure to perform their ministerial duty of requiring bond of a clerk of the superior court. Moffitt v. Davis, 205 N.C. 565, 172 S.E. 317 (1934).

Joinder of Parties and Causes of Action. —See Ellis v. Brown, 217 N.C. 787, 9 S.E.2d 467 (1940).

Cited in State ex rel. Cole v. Patterson, 97 N.C. 360, 2 S.E. 362 (1887), to show how stringently the obligation of seeing to the sufficiency of the bond is enforced.

§ **109-14. Record of board conclusive as to facts stated.**—In all actions under § 109-13 a copy of the proceedings of the board of commissioners in the particular case, certified by their clerk under his hand and the seal of the county, is conclusive evidence of the facts in such record alleged and set forth. (1869-70, c. 169, s. 8; Code, s. 1881; Rev., s. 314; C. S., s. 336.)

§ **109-15. Person required to approve bond not to be surety.**—No member of the board of commissioners, or any other person authorized to take official bonds, shall sign as surety on any official bond upon the sufficiency of which the board of which he is a member may have to pass. (1874-5, c. 120, s. 3; Code, s. 1887; Rev., s. 315; C. S., s. 337.)

Article 2.

Bonds in Surety Company.

§ 109-16. State officers may be bonded in surety company.—All persons who are required to give bond to the State of North Carolina to be received by the Governor or by any department of the State government, in lieu of personal security, may give as security for said bond and for the performance of the duties named in the said bond any indemnity or guaranty company authorized to do business in the State of North Carolina, subject to such regulations as the Governor or department may prescribe, and with power in them to demand additional security at any time. Any person presenting any indemnity or guaranty company as surety shall accompany his bond with a statement of the Insurance Commissioner as to the condition of such company as required by law. (1901, c. 754; Rev., s. 272; C. S., s. 338.)

Bond Construed against Company. — A surety bond shall be construed most strongly against the company and most favorably to its general intent and essential purpose. Bank of Tarboro v. Fidelity & Deposit Co., 128 N.C. 366, 38 S.E. 908 (1901), discussing compliance with requirement of notice of default.

§ 109-17. When surety company sufficient surety on bonds and undertakings.—A bond or undertaking by the laws of North Carolina required or permitted to be given by a public official, fiduciary, or a party to an action or proceeding, conditioned for the doing or not doing of an act specified therein, shall be sufficient when it is executed or guaranteed by a corporation authorized in this State to act as guardian or trustee, or to guarantee the fidelity of persons holding places of public or private trust, or to guarantee the performance of contracts, other than insurance policies, or to give or guarantee bonds and undertakings in actions or proceedings.

The bond or undertaking of a corporation having such power shall be sufficient, although the law or regulation in accordance with which it is given requires two or more sureties, or requires the sureties to be residents or freeholders. But the clerk of the superior court may exercise his discretion as to accepting such a corporation's surety on the bonds of fiduciaries or parties to actions or proceedings. (1895, c. 270; 1899, c. 54, s. 45; 1901, c. 706; Rev., s. 273; C. S., s. 339.)

Same Liability as an Individual. — A surety corporation allowed by this section to give guardian bonds is held to the same liability on a bond given by it as an individual would be, and is responsible to the ward when the guardian's failure to properly perform his duties causes loss to the ward's estate. Roebuck v. National Sur. Co., 200 N.C. 196, 156 S.E. 531 (1931).

Cited in Pierce v. Pierce, 197 N.C. 348, 148 S.E. 438 (1929).

§ 109-18. Clerk to notify county commissioners of condition of company.—Each clerk of the superior court shall furnish the chairman of the board of county commissioners of his county with notice of each surety company licensed in this State, and of each surety company whose license has been revoked, in which any officer of the county has been bonded. (Rev., ss. 295, 4803; C. S., s. 340.)

§ 109-19. Release of company from liability.—A company executing such bond, obligation or undertaking, may be released from its liability or security on the same terms as are or may be by law prescribed for the release of individuals upon any such bonds, obligations or undertakings. (1899, c. 54, s. 48; Rev., s. 274; C. S., s. 341.)

Company May Be Released Only by Getting Off Bond.—Under this section a surety company can be released from its liability on a bond only by getting off the bond. Bank of Tarboro v. Fidelity & Deposit Co., 128 N.C. 366, 38 S.E. 908 (1901).

Defalcations after Expiration of Term of Office. — A surety company is not liable for defalcations committed after the expiration of the term of office to which the bond refers. Blades v. Dewey, 136 N.C. 176, 48 S.E. 627 (1904).

§ **109-20. Company not to plead ultra vires.**—Any company which executes any bond, obligation or undertaking under the provisions of this article is estopped, in any proceeding to enforce the liability which it assumes to incur, to deny its corporate power to execute such instrument or assume such liability. (1899, c. 54, s. 49; 1901, c. 706, s. 1, subsec. 5; Rev., s. 275; C. S., s. 342.)

§ **109-21. Failure to pay judgment is forfeiture.**—If a surety company against which a judgment is recovered fails to discharge the same within sixty days from the time such final judgment is rendered, it shall forfeit its right to do business in this State, and the Insurance Commissioner shall cancel its license. (1901, c. 706, s. 1, subsec. 5; Rev., s. 275; C. S., s. 343.)

§ **109-22. On presentation of proper bond officer to be inducted.**—Upon presentation to the person authorized by law to take, accept and file official bonds, of any bond duly executed in the penal sum required by law by the officer chosen to any such office, as principal, and by any surety company, as security thereto, whose insurance or guaranty is accepted as security upon the bonds of United States bonded officials (such insurance company having complied with the insurance laws of the State of North Carolina), or by any other good and sufficient security thereto, such bond shall be received and accepted as sufficient, and the principal thereon shall be inducted into office. (1899, c. 54, s. 53; 1901, c. 706, s. 1, subsec. 5; Rev., s. 276; C. S., s. 344.)

Estoppel to Deny Validity of Bond.—Although the failure of the treasurer to sign a bond was an irregularity under this section, both the treasurer and the surety recognized their liability thereon by offering a second bond in substitution, and both were estopped to deny the validity of the first bond on the ground of such irregularity. State ex rel. Bd. of Comm'rs v. Inman, 203 N.C. 542, 166 S.E. 519 (1932).

§ **109-23. Expense of fiduciary bond charged to fund.** — A receiver, assignee, trustee, committee, guardian, executor or administrator, or other fiduciary required by law to give a bond as such, may include as part of his lawful expenses such sums paid to such companies for such suretyship to the extent of bond premiums actually paid per annum on the account of such bonds as the clerk, judge or court may allow. (1901, c. 706, s. 1, subsec. 5; Rev., s. 277; C. S., s. 345; 1939, c. 382.)

Article 3.

Mortgage in Lieu of Bond.

§ **109-24. Mortgage in lieu of required bond.** — An administrator, executor, guardian, collector or receiver, or an officer required to give an official bond, or the agent or surety of such person or officer, may execute a mortgage on real estate, of the value of the bond required to be given by him to the State of North Carolina, conditioned to the same effect as the bond should be, were the same given, with a power of sale, which power of sale may be executed by the clerk of the superior court, with whom said mortgage shall be deposited, upon a breach of any of the conditions of said mortgage, after advertisement for thirty days. (1874-5, c. 103, s. 2; Code, s. 118; Rev., s. 265; C. S., s. 346.)

Mortgage of Intestate's Property. — A mortgage by an administrator on property of his intestate to which the administrator is heir does not comply with an order to increase the bond as such a mortgage does not increase the penalty. Sellars v. Faulk, 118 N.C. 573, 24 S.E. 430 (1896).

Failure to Record. — The mortgage or deed in trust permitted by this section, to be given in lieu of an official bond, is, as to proper registration, to be regarded as a mortgage, or deed in trust, and accordingly registered as the law requires, construing the statute strictly, as required; and its entry upon the records in the clerk's office as a bond, alone, without recording it in its proper place as a mortgage is insufficient to give notice to, or priority of lien, over a deed of a subsequent purchaser of the land. Hooper v. Tallassee Power Co., 180 N.C. 651, 105 S.E. 327 (1920).

§ 109-25. Mortgage in lieu of security for appearance, costs, or fine.—Any person required to give a bond or undertaking, or required to enter into a recognizance for his appearance at any court, in any criminal proceeding, or for the security of any costs or fine in any criminal action, may also execute a mortgage on real or personal property of the value of such bond or recognizance, payable to the State of North Carolina, conditioned as such bond or recognizance would be required, with power of sale, which power shall be executed by the clerk or justice of the peace in whose court said mortgage is executed, upon a breach of any of the conditions of said mortgage.

Where such mortgage upon real property is executed before a justice of the peace the power of sale shall be enforced by the clerk of the court of the county in which the criminal proceeding is had.

No such mortgage on real property executed for the security for costs or fine shall allow a longer time for payment of said costs or fine than six months from the execution thereof, and no mortgage on personal property a longer time than three months, except in cases of appeal, when the time allowed shall be counted from the date of the final decision in the cause.

All legitimate expenses of sale, which shall only be made after due advertisement according to law, shall be paid out of the proceeds of the sale of the mortgaged property, as shall also the following fees, to wit: For each sale of real property mortgaged under this section the clerk shall receive two dollars, and for each sale of personal property mortgaged under this section the clerk or justice of the peace who enforces the power of sale shall receive one dollar. (1874-5, c. 103, s. 3; Code, s. 120; 1891, c. 425, ss. 1, 2, 3; Rev., s. 266; C. S., s. 347.)

Applicability to Justice's Court. — This section, as it read in the Code of 1883, had no application in courts of justices of the peace. Comron v. Standland, 103 N.C. 207, 9 S.E. 317 (1889). Since the decision in this case, however, the section has been amended and the words "or justice of the peace" have been inserted near the end of the first paragraph. Ed. Note.

Foreclosure and Sale.—The clerk of the superior court may foreclose a mortgage on land given by plaintiff to secure costs of his action when the costs are awarded against him, or the clerk may report the matter to the court for a decree of sale by himself, the latter being the better practice to insure a safer title and prevent a needless sacrifice. Clark v. Fairly, 175 N.C. 342, 95 S.E. 550 (1918).

When the superior court, in term, acting through the presiding judge, has duly acquired jurisdiction to decree foreclosure, it is his duty to supervise the sale and see that the land brings a fair price; and when such sale has not been made accordingly, he may set aside the sale, and permit the plaintiff to pay the costs properly chargeable against him. Clark v. Fairly, 175 N.C. 342, 95 S.E. 550 (1918).

It is proper for the court to confirm the sale, and possibly it is necessary for him to do so. Clark v. Fairly, 175 N.C. 342, 95 S.E. 550 (1918).

A decree of confirmation of the sale of lands to pay the cost of an action under a mortgage given to secure them, under this section, may be set aside by the judge during the term of the superior court at which it was entered. Clark v. Fairly, 175 N.C. 342, 95 S.E. 550 (1918).

Cited in State ex rel. Solicitor v. Jenkins, 121 N.C. 637, 28 S.E. 413 (1897).

§ 109-26. Cancellation of mortgage in such proceedings.—Any mortgage given by any person in lieu of bond as administrator, executor, guardian, collector, receiver or as an officer required to give an official bond, or as agent or surety of such person or officer, or in lieu of bond or undertaking or recognizance for his appearance at any court in any criminal proceeding, or for the security of any cost or fine in a criminal action which has been registered, when such party as administrator, executor, guardian, collector, or receiver has filed his final account and when the time required by statute for the bond given by any administrator, executor, guardian, collector, or receiver to remain in force for the purpose of action thereon has expired, or when the officer required to give an official bond has fully complied with the conditions of such bond and the time within which suit is allowed by law to be brought thereon has expired, or when the person giving such mortgage in lieu of bond has made his appearance at the court to which he was bound and did not depart the court without leave, or paid the cost or fine required, may be canceled or discharged by the clerk of the superior court of the county where such action was pending or where the mortgage in lieu of bond is recorded by entry of "satisfaction" upon the margin of the record where such mortgage is recorded in the presence of the register of deeds, or his deputy, who shall subscribe his name as a witness thereto, and such cancellation shall have the effect to discharge and release all the right, title and interest of the State of North Carolina in and to the property described in such mortgage. (1905, c. 106; Rev., s. 267; C. S., s. 348; 1921, c. 29, ss. 1, 2; 1925, c. 252, s. 1.)

§ **109-27. Validating statute.** — All acts heretofore done by the several superior court clerks, canceling or satisfying any mortgage, or other instruments, herein mentioned and specified are hereby validated. (1925, c. 252, s. 2.)

§ **109-28. Clerk of court may give surety by mortgage deposited with register.**—In all cases where the clerk of the superior court may be required to give surety, he may deposit a mortgage with the register of deeds, payable to the State, and conditioned, as the bond would have been required, with power of sale. The power of sale shall be executed by the register of deeds, upon a breach of any of the conditions of said mortgage; and the register of deeds shall in all cases immediately register the same, at the expense of the said clerk. (1874-5, c. 103, s. 6; Code, s. 122; Rev., s. 268; C. S., s. 349.)

§ **109-29. Mortgage in lieu of bond to prosecute or defend in civil case.**—It is lawful for any person desiring to commence any civil action or special proceeding, or to defend the same, his agent or surety, to execute a mortgage on real estate of the value of the bond or undertaking required to be given, at the beginning of said action, or at any stage thereof, to the party to whom the bond or undertaking would be required to be made, conditioned to the same effect as such bond or undertaking, with power of sale, which power of sale may be executed upon a breach of any of the conditions of the said mortgage after advertisement for thirty days. (1874-5, c. 103, s. 1; Code, s. 117; Rev., s. 269; C. S., s. 350.)

Section Strictly Observed.—This section is exceptional in its provisions, and must be strictly observed. Eshon v. Board of Comm'rs, 95 N.C. 75 (1886).

Undertaking on Appeal.—If it be granted that this section applies to an undertaking on appeal, the section was not complied with where the appellant deposited with the clerk, a bond due to himself and secured by a mortgage, as a substitute for the undertaking. Eshon v. Board of Comm'rs, 95 N.C. 75 (1886).

Section Does Not Require Mortgage.—This section does not authorize the court to require a party to execute a mortgage of real estate in the case therein provided for. It simply allows the party of whom an undertaking may be required in such cases to give such mortgage instead of it, and the former must be for the same amount as the latter. Wilson v. Fowler, 104 N.C. 471, 10 S.E. 566 (1889).

Not Applicable to Justice's Court.—This section has no application in courts of justices of the peace. Comron v. Standland, 103 N.C. 207, 99 S.E. 317 (1889).

Third Person Executing Mortgage for Defendant. — Where a mortgage is given by a third person for the defendant in an action, as is permitted by this section, and the mortgagor subsequently purchases a part of the mortgaged property, it was held, upon the plaintiff's recovering from the defendant, that the mortgagor has no such interest as will allow him to interfere with the plaintiff's rights under his judgment. Ryan v. Martin, 104 N.C. 176, 10 S.E. 169 (1889).

§ **109-30. Affidavit of value of property required.**—In all cases where a mortgage is executed, as hereinbefore permitted, it is the duty of the clerk of the court in which it is executed, or of the justice, to require an affidavit of the value of the property mortgaged to be made by at least one witness not interested in the matter, action or proceeding in which the mortgage is given. (1874-5, c. 103, s. 4; Code, s. 121; Rev., s. 270; C. S., s. 351.)

§ 109-31. When additional security required.—If, from any cause, the property mortgaged in lieu of a bond becomes of less value than the amount of the bond in lieu of which the mortgage is given, and it so appears upon affidavit of any person having any interest in the matter as a security for which the mortgage was given, it is the duty of the mortgagor to give additional security by a deposit of money, or the execution of a mortgage on more property, or justify as required in cases where bond or undertaking is given. (1874-5, c. 103, s. 5; Code, s. 119; Rev., s. 271; C. S., s. 352.)

Article 4.

Deposit in Lieu of Bond.

§ 109-32. Deposit of cash or securities in lieu of bond; conditions and requirements.—In lieu of any written undertaking or bond required by law in any matter, before any court of the State, the party required to make such undertaking or bond may make a deposit in cash or securities of the State of North Carolina or of the United States of America, of the amount required by law or, in the case of fiduciaries, of the amount of the trust, in lieu of the said undertaking or bond and such deposit shall be subject to all of the same conditions and requirements as are provided for in written undertakings or bonds, in lieu of which such deposit is made. (1923, c. 58; C. S., s. 352(a); 1947, c. 936.)

Editor's Note. — For comment on this section, see 1 N.C.L. Rev. 283; 25 N.C.L. Rev. 384.

Article 5.

Actions on Bonds.

§ 109-33. Bonds in actions payable to court officer may be sued on in name of State.—Bonds and other obligations taken in the course of any proceeding at law, under the direction of the court, and payable to any clerk, commissioner, or officer of the court, for the benefit of the suitors in the cause, or others having an interest in such obligation, may be put in suit in the name of the State. (R. C., c. 13, s. 11; Code, s. 51; Rev., s. 280; C. S., s. 353.)

Quoted in Lackey v. Pearson, 101 N.C. 651, 8 S.E. 121 (1888).

§ 109-34. Liability and right of action on official bonds.—Every person injured by the neglect, misconduct, or misbehavior in office of any clerk of the superior court, register, entry taker, surveyor, sheriff, coroner, constable, county treasurer, or other officer, may institute a suit or suits against said officer or any of them and their sureties upon their respective bonds for the due performance of their duties in office in the name of the State, without any assignment thereof; and no such bond shall become void upon the first recovery, or if judgment is given for the defendant, but may be put in suit and prosecuted from time to time until the whole penalty is recovered; and every such officer and the sureties on his official bond shall be liable to the person injured for all acts done by said officer by virtue or under color of his office. (1793, c. 384, s. 1, P. R.; 1825, c. 9, P. R.; 1833, c. 17; R. C., c. 78, s. 1; 1869-70, c. 169, s. 10; Code, s. 1883; Rev., s. 281; C. S., s. 354.)

Cross Reference.—As to surety waiving his rights under §§ 109-33 through 109-35 by appearing and answering in a summary proceeding, see § 109-36 and the note thereto.

Leave of Court Unnecessary.—The section gives in express terms the right to bring one or more suits upon one or more of the bonds to "every injured person," not on leave from the court, but absolutely and unconditionally so soon as the breach occurs, except that it is to be instituted in the name of the State. Boothe v. Upchurch, 110 N.C. 62, 14 S.E. 642 (1892); Reid v. Holden, 242 N.C. 408, 88 S.E.2d 125 (1955).

Sections Construed Together. — This section and § 109-37 relate to the same subject matter, are part of one and the same statute, and must be construed together. State ex rel. Underwood v. Watson, 223 N.C. 437, 27 S.E.2d 144 (1943).

Remedies against Superior Court Clerks. —Our statutes provide two separate and distinct remedies against clerks of the superior court—one in behalf of the injured individual for a specific fund to which he is entitled or on account of a particular wrong committed against him by the officer, as provided in this section; and one in behalf of the new clerk against his predecessor in office to recover possession of records, books, papers and money in the hands of the outgoing clerk by virtue or under color of his office, as provided for in § 2-22. State ex rel. Underwood v. Watson, 223 N.C. 437, 27 S.E.2d 144 (1943).

This section is not repugnant to the provisions of § 2-22, which requires that each successive clerk shall receive from his predecessor all the records, moneys, and property of his office, but only gives an additional remedy for the benefit of individuals who have cause of complaint against an unfaithful clerk of the superior court. Peebles v. Boone, 116 N.C. 57, 21 S.E. 187 (1895).

The failure of a register of deeds to properly index the registry of a mortgage renders him liable on his official bond to one injured by such neglect. State ex rel. Daniel v. Grizzard, 117 N.C. 105, 23 S.E. 93 (1895).

Person Injured. — Where H. places a note for collection in a constable's hands, and the constable sues out a warrant, obtains a judgment and receives the amount (even though there is no execution) and fails to pay the same to H., H. as the person injured is entitled to have the suit brought to his use under this section. Holcomb v. Franklin, 11 N.C. 274 (1826).

The father of a girl under eighteen, to whom a marriage license has been issued without the father's consent, is the person injured within the meaning of this section. Joyner v. Roberts, 112 N.C. 111, 16 S.E. 917 (1893).

Under this section, claimants of a fund arising from a partition sale are the proper parties to sue on bond of the clerk for failure of the clerk to pay funds turned over to him by the commissioners in partition. Smith v. Patton, 131 N.C. 396, 42 S.E. 849 (1902).

An action can be maintained by the clerk of a superior court in his own name upon the official bond of the sheriff, for the recovery of costs accrued in such court and collected by the sheriff, and due and payable to said clerk and others. Jackson v. Maultsby, 78 N.C. 174 (1878).

By Virtue or under Color of Office.— The last clause of this section is very comprehensive in its terms, scope and purpose. It, on purpose, enlarges the compass of the conditions of official bonds and their purpose, and the legislature intended by it, it seems, to prevent an evil pointed out in two or three of the cases. There were no adequate reasons why the conditions of official bonds should not extend to and embrace all the official duties of the office, and there were serious ones of justice and policy why they should. All persons interested are bound to accept the official services of such officers, as occasion may require, and they should be made secure in their rights, and have adequate remedy for wrongs done by them. Besides all public officers should be held to a faithful discharge of their duties as such. It is singular that the clause last recited, notwithstanding a well known evil to be remedied, was not enacted until 1883. It first appears as part of the Code. Now official bonds and the conditions of them embrace and extend to all acts done by virtue or under color of office of the officer giving the bond. Thomas v. Connelly, 104 N.C. 342, 10 S.E. 520 (1889); Kivett v. Young, 106 N.C. 567, 10 S.E. 1019 (1890).

In State ex rel. Wimmer v. Leonard, 68 F.2d 228 (4th Cir. 1934) a sheriff's bond contained a condition limiting the faithful execution of the office to specific duties such as execution of process and in view of this, and the wording of this section, the bond was held to afford no basis for a recovery by a person whom the sheriff wounded while acting in his official capacity.

This section extends the liability on the sheriff's general official bond and imposes liability for wrongful arrest and the use of excessive force in making an arrest under color of office. Price v. Honeycutt, 216 N.C. 270, 4 S.E.2d 611 (1939).

The surety on a bond of a delinquent tax collector is not liable for an arrest made by the collector in order to force the payment of a delinquent tax, since such act of the tax collector is not done under color of his office and does not come within the condition of the bond that he should "well and truly perform all the duties of his said office." Henry v. Wall, 217 N.C. 365, 8 S.E.2d 223, 127 A.L.R. 854 (1940).

Same—Acts Which Should Have Been Performed. — It is true that the clause seems in terms to provide only for acts done by the officer, and not for those which he should do but does not. But it would be putting a very narrow construction on the statute to say that he and his sureties are liable for what he did, but not for what he should have done and did not do, although the damage to the party was equally as great. State ex rel. Daniel v. Grizzard, 117 N.C. 105, 23 S.E. 93 (1895).

Same—Illustrative Acts.—Where a clerk appointed the commissioner to make a partition sale, without bond, and on approving his report received and receipted the proceeds as clerk, took out his costs and entered the amount due each heir at law on his docket, and disbursed a portion of said fund to the parties entitled, this would seem to be a receipt of the fund by the clerk "by virtue of his office." The Judges v. Deans, 9 N.C. 93 (1822); McNeill v. Morrison, 63 N.C. 508 (1869); Cox v. Blair, 76 N.C. 78 (1877). But if this were otherwise the clerk received it "as clerk," and so receipted for it. This was certainly a receipt of the money "under color of his office," and, indeed, this is admitted in the answer. The older decisions were made when these words were not in the statute. The clause embraces all cases where the officer received the money in his official capacity, but when he may not be authorized or required to receive the same. In such case the bond is responsible for the safe custody of the fund so paid in. Smith v. Patton, 131 N.C. 396, 42 S.E. 849 (1902), citing Broughton v. Haywood, 61 N.C. 380 (1867); Greenlee v. Sudderth, 65 N.C. 470 (1871); Brown v. Coble, 76 N.C. 391 (1877); Ex parte Cassidey, 95 N.C. 225 (1886); Thomas v. Connelly, 104 N.C. 342, 10 S.E. 520 (1889); Sharpe v. Connelly, 105 N.C. 87, 11 S.E. 177 (1890); Presson v. Boone, 108 N.C. 78, 12 S.E. 897 (1891).

Under this section the official bond of a constable is liable for the false imprisonment of a person by a constable, as such, without process or color thereof. Warren v. Boyd, 120 N.C. 56, 26 S.E. 700 (1897).

When the clerk of the superior court is appointed receiver of a minor's estate, he takes and holds the funds by virtue of his office of clerk, and his sureties upon his official bond as such officer are liable for any failure of duty on his part in that respect. Boothe v. Upchurch, 110 N.C. 62, 14 S.E. 642 (1892).

Bonds Cumulative.—Official bonds given by an officer during any one term of office are cumulative, and the new bond does not discharge the old case. Oats v. Bryan, 14 N.C. 451 (1832); Bell v. Jasper, 37 N.C. 597 (1846); Poole v. Cox, 31 N.C. 69, 49 Am. Dec. 410 (1848); Moore v. Boudinot, 64 N.C. 190 (1870); Pickens v. Miller, 83 N.C. 544 (1880); Fidelity & Deposit Co. v. Fleming, 132 N.C. 332, 43 S.E. 899 (1903).

Where the surety has renewed the bond of a clerk of the court upon his election to that office a second time, acknowledged its liability and received premiums thereon, its liability is cumulative for all defalcations thereunder, whether for the second term its principal was continuing to act de facto or de jure. Lee v. Martin, 186 N.C. 127, 118 S.E. 914 (1923).

The first bonds continue to be a security for the discharge of the duties during the whole term, and the new bonds become additional security for the discharge of such of the duties as have not been performed at the time they are given. Poole v. Cox, 31 N.C. 69, 49 Am. Dec. 410 (1848). See also Oats v. Bryan, 14 N.C. 451 (1832); Bell v. Jasper, 37 N.C. 597 (1843).

Action on Bond and on Case.—An action of debt on a sheriff's bond for money collected, and a nonsuit therein, is a sufficient demand to enable the plaintiff to sustain an action on the case for the same cause of action. Fagan v. Williamson, 53 N.C. 433 (1862).

Negligent Conduct of Jailer Imputed to Sheriff.—Under this section the sheriff and the surety on his official bond are liable for the wrongful death of a prisoner resulting from the negligence of the jailer in locking the prisoner, in the weakened condition, in a cell with a person whom the sheriff and the jailer knew to be violently insane, and who assaulted the prisoner during the night, inflicting the fatal injury. Dunn v. Swanson, 217 N.C. 279, 7 S.E.2d 563 (1940). For note on this case, see 19 N.C.L. Rev. 101.

Necessary Parties in Action against Deputy Sheriff.—If the defendant were acting in the capacity of deputy sheriff at the time of the alleged assault and false arrest, he and the surety on his bond, and the sheriff and the surety on his bond, would be proper and necessary parties to the action based on the cause of action for the alleged assault and false arrest. State ex rel. Cain v. Corbett, 235 N.C. 33, 69 S.E.2d 20 (1952).

Applied in Bank of Spruce Pine v. McKinney, 209 N.C. 668, 184 S.E. 506 (1936).

Cited in Jordan v. Harris, 225 N.C. 763, 36 S.E.2d 270 (1945); Midgett v. Nelson, 214 N.C. 396, 199 S.E. 393 (1938); Davis v. Moore, 215 N.C. 440, 2 S.E.2d 366 (1939).

§ 109-35. Complaint must show party in interest; election to sue officer individually.—Any person who brings suit in manner aforesaid shall state in his complaint on whose relation and in whose behalf the suit is brought, and he shall be entitled to receive to his own use the money recovered; but nothing herein contained shall prevent such person from bringing at his election an action against the officer to recover special damages for his injury. (1793, c. 384, ss. 2, 3, P. R.; R. C., c. 78, s. 2; 1869-70, c. 169, s. 11; Code, s. 1884; Rev., s. 282; C. S., s. 355.)

The relator is the real party in interest in an action brought in the name of the State on an official bond, and he will be so considered in determining the identity of the parties under a plea of res judicata in a subsequent action. Reid v. Holden, 242 N.C. 408, 88 S.E.2d 125 (1955).

Cited in Western Carolina Power Co. v. Yount, 208 N.C. 182, 179 S.E. 804 (1935).

§ 109-36. Summary remedy on official bond.—When a sheriff, coroner, constable, clerk, county or town treasurer, or other officer, collects or receives any money by virtue or under color of his office, and on demand fails to pay the same to the person entitled to require the payment thereof, the person thereby aggrieved may move for judgment in the superior court against such officer and his sureties for any sum demanded; and the court shall try the same and render judgment at the term when the motion shall be made, but ten days' notice in writing of the motion must have been previously given. (1819, c. 1002, P. R.; R. C., c. 78, s. 5; 1869-70, c. 169, s. 14; 1876-7, c. 41, s. 2; Code, s. 1889; Rev., s. 283; C. S., s. 356.)

Remedy Cumulative.—It has never been understood that this cumulative and optional remedy obstructed the bringing of a regular action on the bond, when the injured party preferred to have recourse to it. Lackey v. Pearson, 101 N.C. 651, 8 S.E. 121 (1888).

Justice Has No Jurisdiction.—Since the repeal of § 13 of c. 80 of Battle's Revision it has been decided by repeated adjudications that a justice of the peace has no jurisdiction of an action on a constable's bond. Coggins v. Harrell, 86 N.C. 317 (1882).

To What Officers Applicable.—In Smith v. Moore, 79 N.C. 86 (1878), it was held that the power conferred by this section as it read in the Revised Code of 1856, was confined to the officers named therein, and that there was no way to hold a commissioner appointed to make a judicial sale liable for the proceeds thereof, except by an action instituted by the parties entitled to the money. Subsequently to this decision the words "or other public officer," have been inserted in the section; but applying the ejusdem generis rule it would seem that these words would not include a master in chancery and that the Smith case declares the law as it still stands. See, however, Ex parte Curtis, 82 N.C. 435 (1880), where the court states that a remedy against executrix and clerk and master should have been by summary motion under this section.

Actions by Persons Entitled to Money.—The section gives a summary remedy against public officers only to those entitled to the money, so that a new clerk cannot proceed under it against a former clerk, for not paying office money over to him as his successor. O'Leary v. Harrison, 51 N.C. 338 (1859).

There is no provision in the statute giving a preference to the party or parties who first seek such summary remedy. And, withal, before any claim, preferential or otherwise, can be established under this statute, notice must be given, the court must try the cause, and judgment must be obtained. Western Carolina Power Co. v. Yount, 208 N.C. 182, 179 S.E. 804 (1935).

It was never intended that the mere lodging of a motion under this section, established a preference, or right to establish a preference, over other creditors when such other creditors had been guilty of no laches in asserting their claims. Western Carolina Power Co. v. Yount, 208 N.C. 182, 179 S.E. 804 (1935).

Minor Interested in Fund Must Be Represented by Guardian Ad Litem. — Where a judgment for personal injuries in an action prosecuted by the father as next friend for his minor son is paid only in part, it is error for the court on the father's motion under this section to order the clerk to pay the father out of the recovery the entire amount expended by the father for necessary medical treatment of the minor, when the minor is not represented by a disinterested guardian ad litem, since the interests of the father and the minor in the fund are antagonistic.

White v. Osborne, 251 N.C. 56, 110 S.E.2d 449 (1959).

Proceedings May Be Consolidated with General Creditors' Suit. — Plaintiff instituted summary proceedings under this section against the clerk of the superior court and the surety on his bond to recover for the clerk's default in failing to return to plaintiff, as ordered by the superior court, moneys deposited with the clerk. Notice and complaint in the proceeding were served on defendants. Thereafter another creditor of the clerk instituted suit in her own behalf and in behalf of all persons similarly situated, and decree was entered appointing a permanent receiver for the clerk, authorizing the receiver to bring suit on the clerk's bonds, and enjoining all creditors of the clerk from instituting any other suit or action against him or on his bonds. In the summary proceeding under this section, the surety on the clerk's bond pleaded the decree affirming receiver in bar to plaintiff's right to judgment, and the trial court dismissed the summary proceeding. Held, the summary proceeding should have been consolidated with the suit in the nature of a general creditor's bill. Western Carolina Power Co. v. Yount, 205 N.C. 321, 171 S.E. 321 (1933).

Demand Not Necessary.—In a proceeding by the State, against a clerk of the superior court and the surety on his bond to recover sums embezzled by the clerk, the plaintiffs have the right to pursue the summary remedy under this section, upon their motion after due notice, and demand upon the clerk is not necessary. State v. Gant, 201 N.C. 211, 159 S.E. 427 (1931).

Waiver by Appearance.—Where a summary proceeding under this section has been instituted against a clerk of the superior court and the surety on his bonds to recover sums embezzled by the clerk, and the surety has entered a general appearance and filed answer, etc., the surety has waived its rights, if any it had, under §§ 109-33 through 109-35, to object that the plaintiffs could not maintain a summary proceeding under this section. State v. Gant, 201 N.C. 211, 159 S.E. 427 (1931).

Judgment. — Under this practice, judgment was entered for the amount of the bond, the execution to be satisfied on payment of the sum collected and costs. Fell v. Porter, 69 N.C. 140 (1873). From the language of the opinion in this case, it would seem that at the time of decision the operation of this section had been suspended.—Ed. Note.

Where A. obtained a judgment against B., clerk of the superior court, for a sum of money in his hands by virtue of his office, and B. died, and his administrator, upon demand, failed to pay the money, it was held that the court below erred in overruling a motion by the plaintiff for a judgment upon the official bond of the clerk under the provisions of this section. Cooper v. Williams, 75 N.C. 94 (1876).

Notice.—As this section read in Battle's Revision the proceedings were "without other notice than is given by the delinquency of the officer." See Prairie v. Jenkins, 75 N.C. 545 (1876).

Applied in State v. Sawyer, 223 N.C. 102, 25 S.E.2d 443 (1943).

§ 109-37. Officer unlawfully detaining money liable for damages.—When money received as aforesaid is unlawfully detained by any of said officers, and the same is sued for in any mode whatever, the plaintiff is entitled to recover, besides the sum detained, damages at the rate of twelve per centum per annum from the time of detention until payment. (1819, c. 1002, s. 2, P. R.; R. C., c. 78, s. 9; 1868-9, c. 169; Code, s. 1890; Rev., s. 284; C. S., s. 357.)

This section must be considered in connection with § 109-36. Pasquotank County v. Hood, 209 N.C. 552, 184 S.E. 5 (1936).

And § 109-34.—This section and § 109-34 relate to the same subject matter and are a part of one and the same statute. They must be construed together. State ex rel. Underwood v. Watson, 223 N.C. 437, 27 S.E.2d 144 (1943).

This Section and § 109-36 Are Not Applicable to Liquidation of Banks by Commissioner of Banks.—This section and § 109-36 are inapplicable to impose liability for damages in a case where the Commissioner of Banks took over the affairs of a bank which had been theretofore constituted the financial agent of the county and which had county funds on deposit and in its possession. Pasquotank County v. Hood, 209 N.C. 552, 184 S.E. 5 (1936).

The Commissioner of Banks holding a portion of the fund, subject to the orders of the court and for the purpose of liquidation, could not be said to constitute an "unlawful detention," nor should he in his representative capacity be liable in damages as a penalty for so doing. The punishment would not fall upon a defaulting or delinquent public officer, as intended by the statute, but would penalize funds held in trust for all the creditors and stockholders whose stock assessments have helped to contribute. Pasquotank County v. Hood, 209 N.C. 552, 184 S.E. 5 (1936).

Default of Officer Must Be Shown.—In an action to recover the twelve percent allowed under this section, it is necessary that the plaintiff show some adequate default. Hannah v. Hyatt, 170 N.C. 634, 87 S.E. 517 (1916).

Liability of Surety.—While, as against the principal on the bond of a clerk of the superior court, interest under the statute at the rate of twelve percent is collectible from the time of defalcation, the amount of the penalty on his bond determines the liability of the surety thereon. State ex rel. Lee v. Martin, 188 N.C. 119, 123 S.E. 631 (1924).

Effect of Waiver of Interest from Date of Defalcation. — Where, in an action against a clerk of the superior court and his surety to recover sums embezzled by the clerk, the State waives the interest from the date of the actual defalcations, but does demand the twelve percent from the date of the expiration of each term of office; a judgment awarding damages at twelve percent, under the provisions of this section, on the sums defaulted from the expiration of each term is not error, the amount being within the penalty of the bond. State v. Gant, 201 N.C. 211, 159 S.E. 427 (1931).

Interest by Way of Damages.—Whether or not the clerk is entitled to the benefits of this section, in a suit against his predecessor, is not now decided; but, granting that he is not so entitled, the law allows interest by way of damages on money wrongfully detained. State ex rel. Underwood v. Watson, 223 N.C. 437, 27 S.E.2d 144 (1943); State ex rel. Underwood v. Watson, 224 N.C. 502, 31 S.E.2d 465 (1944).

Applied in Windley v. Lupton, 212 N.C. 167, 193 S.E. 213 (1937).

Cited in Wood v. Citizens Bank, 199 N.C. 371, 154 S.E. 623 (1930).

§ 109-38. Evidence against principal admissible against sureties.—In actions brought upon the official bonds of clerks of courts, sheriffs, coroners, constables, or other public officers, and also upon the bonds of executors, administrators, collectors or guardians, when it may be necessary for the plaintiff to prove any default of the principal obligors, any receipt or acknowledgment of such obligors, or any other matter or thing which by law would be admissible and competent for or toward proving the same as against him, shall in like manner be admissible and competent as presumptive evidence only against all or any of his sureties who may be defendants with or without him in said actions. (1844, c. 38; R. C., c. 44, s. 10; 1881, c. 8; Code, s. 1345; Rev., s. 285; C. S., s. 358.)

Judgments as Evidence—Generally.—In action against an officer and one of the sureties on his official bond, the record of a judgment against the officer, and others of his sureties, in a previous action against them for the same demand, and on the same bond, but in which action the surety in the present action was not a party, is competent evidence to fix the amount due by the officer. Morgan v. Smith, 95 N.C. 396 (1886).

The question how far a judgment or decree is conclusive against a surety of a defendant, or against one who is liable over to a defendant, and who was not a party to the action, is involved in the greatest confusion. Between the intimate relations which exist between such a person and the defendant in the suit, on the one side, and the fundamental principle that no one ought to be bound by proceedings to which he was a stranger, on the other, the court has found it difficult to steer. Dixie Fire Ins. Co. v. American Bonding Co., 162 N.C. 384, 78 S.E. 430 (1913).

The cases are numerous in which it has been decided that a judgment rendered against a guardian is not, unaided by the statute, admissible as evidence against the surety to his bond. McKellar v. Powell, 11 N.C. 34 (1825).

The same rulings have been made in regard to the sureties to an administration bond. Chairman of Mecklenburg v. Clark, 11 N.C. 43 (1825); Vanhook v. Barnett, 15 N.C. 268 (1833); The Governor v. Montford, 23 N.C. 155 (1840); The Governor v. Carter, 25 N.C. 338 (1843). So in reference to the liability of his surety to an amercement against the sheriff.

The act of 1844, (this section) however, changed the rule of law, and rendered competent against the sureties to official bonds, and those given by executors, administrators and guardians, whatever evidence would be competent against the principals, and this was declared to be conclusive, where the evidence was a judgment against him, in Brown v. Pike, 74 N.C. 531 (1876); and in Badger v. Daniel, 79 N.C. 386 (1878).

The act of 1881 amended the previous

enactment by making the evidence "presumptive only" against the sureties. Moore v. Alexander, 96 N.C. 34, 1 S.E. 536 (1887).

"It seems that our predecessors in office upon this Bench have intimated, and in one case held, that such judgments, unaided by the statute, are inadmissible in evidence against the surety. Moore v. Alexander, 96 N.C. 34, 1 S.E. 536 (1887). But an examination of the question has convinced us that the decided trend of modern authority is to the effect that such a judgment against the principal prima facie only establishes the sum or amount of the liability against the sureties, although not parties to the action, but the sureties may impeach the judgment for fraud, collusion, or mistake, as well as set up an independent defense." Dixie Fire Ins. Co. v. American Bonding Co., 162 N.C. 384, 78 S.E. 430 (1913).

While this section fixed the rule as to actions brought upon the official bonds of clerks of courts, sheriffs, coroners, constables, or other public officers, and also upon the bonds of executors, administrators, collectors, or guardians, the precedents were in hopeless discord as to bonds not covered by the statute, until Associate Justice Brown laid down the rule in Dixie Fire Ins. Co. v. American Bonding Co., 162 N.C. 384, 78 S.E. 430 (1913). "But an examination of the question has convinced us that the decided trend of modern authority is to the effect that such a judgment against the principal prima facie only establishes the sum or amount of the liability against the sureties, although not parties to the action, but the sureties may impeach the judgment for fraud, collusion, or mistake, as well as set up an independent defense." Charleston & W.C. Ry. v. Robert G. Lassiter & Co., 208 N.C. 209, 179 S.E. 789 (1935).

Same—Evidence of Assets as Well as Debts.—See Armistead v. Harramond, 11 N.C. 339 (1826); Brown v. Pike, 74 N.C. 531 (1876); Badger v. Daniel, 79 N.C. 386 (1878); Morgan v. Smith, 95 N.C. 396 (1886).

Same—Section Not Applicable to Tort Action. — The rule that the judgment against the principal in an official or fiduciary bond is presumptive evidence against the sureties under this section does not apply where the action is not on the bond, but in tort. Martin v. Buffaloe, 128 N.C. 305, 38 S.E. 902 (1901).

Same—Judgment Based on Admissions of Principal's Administrator, Where Interests of Administrator and Surety Conflict.—A judgment upon the admissions in the answer of the administrator bank of a deceased county treasurer is not competent in an action by the county commissioners as evidence against the surety on the official bond of the deceased when the bank has been made a party defendant and the surety at once raises the issue as to whether a part of the defalcation was moneys defaulted from the bank when the deceased was acting as its assistant cashier, the interest of the bank and the surety being in conflict, and this section not applying in such cases. Commissioners of Chowan County v. Citizens Bank, 197 N.C. 410, 149 S.E. 380 (1929).

For case recognizing the principle adopted in Commissioners of Chowan County v. Citizens Bank, 197 N.C. 410, 149 S.E. 380 (1929), but holding the rule inapplicable under peculiar facts of case, see Charleston & W. C. Ry. v. Robert G. Lassiter & Co., 208 N.C. 209, 179 S.E. 879 (1935).

Annual account of guardian is competent evidence against him, and presumptive evidence against his sureties. Loftin v. Cobb, 126 N.C. 58, 35 S.E. 230 (1900).

Joinder of Administrator and Sureties.—Under this section the sureties on an administrator's bond are properly joined with the administrator, where it is shown that the administrator received a benefit from a falsified final account by reason of which the plaintiffs' judgment against the administrators remained unpaid. State ex rel. Salisbury Morris Plan Co. v. McCanless, 193 N.C. 200, 136 S.E. 371 (1927).

Cited in Pullen v. Heron Mining Co., 71 N.C. 563 (1874); Gurganus v. McLawhorn, 212 N.C. 397, 193 S.E. 844 (1937).

§ 109-39. Officer liable for negligence in collecting debt.—When a claim is placed in the hands of any sheriff, coroner or constable for collection, and he does not use due diligence in collecting the same, he shall be liable for the full amount of the claim notwithstanding the debtor may have been at all times and is then able to pay the amount thereof. (1844, c. 64; R. C., c. 78, s. 3; 1869-70, c. 169, s. 12; Code, s. 1888; Rev., s. 286; C. S., s. 359.)

Section Applicable to Claims, Not Executions. — This section applies only to claims placed in the hands of the sheriff or other officer for collection—such claims as are within the jurisdiction of a justice of the peace, and may be collected by judgment and process of execution granted by that magistrate. It does not apply to executions issuing from the superior or other courts of record. The reason for the distinction is clearly and certainly pointed out in McLaurin v. Buchanan, 60 N.C. 91 (1863). The statute, in effect, now is just as it was when that decision was made. Brunhild v. Potter, 107 N.C. 415, 12 S.E. 55 (1890).

What Constitutes Negligence.—The degree of diligence required is that which a prudent man would ordinarily exercise in the management of his own affairs. A constable is not bound to such strict accountability as when process is delivered to him as an officer. Morgan v. Horne, 44 N.C. 25 (1852); Lipscomb v. Cheek, 61 N.C. 332 (1867). Therefore, what constitutes negligence must depend upon the facts in each particular case; five months' delay was held negligence in Nixon v. Bagby, 52 N.C. 4 (1859).

A constable is not bound to sue out a warrant on a claim put in his hands for collection, when the issuing of such process would be entirely fruitless. State ex rel. Hutchins v. Holcombe, 24 N.C. 211 (1842).

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ARTICLE 1.

Child Labor Regulations.

§ **110-1. Minimum age.**—No minor under sixteen years of age shall be employed, permitted or allowed to work in, about, or in connection with any gainful occupation at any time: Provided, that minors between fourteen and sixteen years of age may be employed outside school hours and during school vacations, but not in a factory or in any occupation otherwise prohibited by law; and provided, that boys twelve years of age and over securing a certificate from the Department of Labor, may be employed outside school hours in the sale or distribution of newspapers, magazines or periodicals subject to the provisions of § 110-8 relating to employment of minors in street trades and to such rules and regulations as may be provided under § 95-11. Nothing in this article shall be construed to apply to the employment of a minor engaged in domestic or farm work performed under the direction or authority of the minor's parent or guardian. (1937, c. 317, s. 1.)

Prior Law.—As to employment of children before the Child Labor Act of 1903, see Ward v. Allen, 126 N.C. 948, 36 S.E. 194 (1900); Fitzgerald v. Alma Furniture Co., 131 N.C. 636, 42 S.E. 946 (1902); Hendrix v. Cotton Mills, 138 N.C. 169, 50 S.E. 561 (1905).

As to employment since the act, see Rolin v. R. J. Reynolds Tobacco Co., 141 N.C. 300, 53 S.E. 891 (1906); Leathers v. Blackwell Durham Tobacco Co., 144 N.C. 330, 57 S.E. 11 (1907); Starnes v. Albion Mfg. Co., 147 N.C. 556, 61 S.E. 525 (1908); Pettit v. Atlantic Coast Line Ry., 156 N.C. 119, 72 S.E. 195 (1911); McGowan v. Ivanhoe Mfg. Co., 167 N.C. 192, 82 S.E. 1028 (1914); Evans v. Dare Lumber Co., 174 N.C. 31, 93 S.E. 430 (1917).

As to employment in messenger or delivery service, see Pettit v. Atlantic Coast Line Ry., 186 N.C. 9, 118 S.E. 840 (1923).

As to mere volunteer injured in performance of simple and ordinary task, see Reaves v. Catawba Mfg. & Elec. Power Co., 206 N.C. 523, 174 S.E. 413 (1934).

§ **110-2. Hours of labor.**—No minor under sixteen years of age shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation more than six consecutive days in any one week, or more than forty hours in any one week, or more than eight hours in any one day, nor shall any minor under sixteen years of age be so employed, permitted or allowed to work before seven o'clock in the morning or after six o'clock in the evening of any day. No minor over sixteen years of age and under eighteen years of age shall be employed, permitted or allowed to work in or about or in connection with any gainful occupation for more than six consecutive days in any one week, or more than forty-eight hours in any one week, or more than nine hours in any one day, nor shall any minor between sixteen and eighteen years of age be so employed, permitted or allowed to work before six o'clock in the morning or after twelve o'clock midnight of any day, except boys between the ages of sixteen and eighteen may be permitted to work until one o'clock in the morning as messengers where the offices of the company for which they work do not close before that hour: Provided, that no girl between sixteen and eighteen years of age shall be so employed, permitted, or allowed to work before six o'clock in the morning or after nine o'clock in the evening of any day; and provided further, that boys twelve years of age and over, employed in the sale or distribution of newspapers, magazines or periodicals outside school hours shall be subject to the provisions of § 110-8 relating to employment of minors in street trades, and to such rules and regulations as may be provided under § 95-11: Provided further, that minors under eighteen years of age may be employed in a concert or a theatrical performance, under such rules and regulations as the State Commissioner of labor may prescribe, up to twelve o'clock midnight; and provided further, that telegraph messenger boys in towns where a full-time service is not maintained on Sundays may work seven days per week, but not for more than two hours on Sunday; and provided further, that girls between the ages of seventeen and eighteen years may be employed as ticket takers, concession attendants, and cashiers in motion picture theaters up to 10:30 at night under such rules and regulations as the Commissioner of Labor may prescribe. The combined hours of work and hours in school of children under sixteen employed outside school hours shall not exceed a total of eight per day. (1937, c. 317, s. 2; 1951, c. 1187, s. 1.)

Violation of Section as Proximate Cause of Injury.—In order to make an employer liable in damages for an injury sustained by an employee being required to work more than eight hours a day in violation of this section, it must be shown that the violation of the statute was a proximate cause of the injury complained of. Williamson v. Old Dominion Box Co., 205 N.C. 350, 171 S.E. 335 (1933).

§ **110-3. Lunch period.**—No minor under sixteen years of age shall be employed or permitted to work for more than five hours continuously without an interval of at least thirty minutes for a lunch period, and no period of less than thirty minutes shall be deemed to interrupt a continuous period of work. (1937, c. 317, s. 3.)

§ **110-4. Posting of hours.** — Every employer shall post and keep conspicuously posted in the establishment wherein any minor under eighteen is employed, permitted, or allowed to work, a printed abstract of this article and a list of the occupations prohibited to such minors, to be furnished by the State Department of Labor. (1937, c. 317, s. 4.)

§ **110-5. Time records.**—Every employer shall keep a time book and/or record, which shall state the name of each minor employed, and which shall indicate the number of hours worked by said minor on each day of the week, and the amount of wages paid during each pay period. Such time record shall be kept on file for at least one year after the entry of the record, and shall be open to the inspection of the State Department of Labor. (1937, c. 317, s. 5.)

§ **110-6. Hazardous occupations prohibited for minors under sixteen.**—No minor under sixteen years of age shall be employed, permitted or allowed to work on or in connection with power-driven machinery. No minor under sixteen years of age shall be employed, permitted or allowed to work in or about or in connection with: Construction work of any kind, shipbuilding, mines or quarries, stone cutting or polishing, the manufacture, transportation or use of explosives or highly inflammable substances, ore-reduction works, smelters, hot rolling mills, furnaces, foundries, forging shops or any other place in which the heating, melting or heat treatment of metals is carried on; lumbering or logging operations, saw or planing mills, pulp or paper mills, or in operating or assisting in operating punch presses or stamping machines, if the clearance between the ram and the die or the stripper exceeds one-fourth inch; power-driven wood-working machinery, cutting machines having a guillotine action, openers, pickers, cards or lappers, power shears, machinery having a heavy rolling or crush-action, corrugating, crimping, or embossing machines, meat grinding machines, dough brakes or mixing machines in bakeries or cracker making machinery, grinding, abrasive, polishing or buffing machines: Provided, that apprentices operating under conditions of bona fide apprenticeship may grind their own tools; machinery used in the cold rolling of heavy metal stock, metal plate bending machines, power-driven metal planing machines, circular saws, power-driven laundry or dry cleaning machinery, oiling, cleaning or wiping machinery or shafting or applying belts to pulleys; or in the operation or repair of elevators or other hoisting apparatus, or as drivers of trucks or other motor vehicles, or in the operation of any unguarded machinery. (1937, c. 317, s. 6.)

"In or about or in Connection with Quarry."—In Campbell Contracting Co. v. Maryland Cas. Co., 21 F.2d 909 (4th Cir. 1927), it is said: "We cannot agree with the contention that a boy operating a hoist that, by means of a cable, pulls cars loaded with stone out of a quarry 150 to 175 feet distant, and whose duty it was upon signal to have the whistle blown, warning of a blast, and whose further duty it was to warn passerby, was not working 'in or about or in connection with a quarry.'"

§ 110-7. Hazardous occupations prohibited for minors under eighteen.—No minor under the age of eighteen years shall be employed, permitted, or allowed to work at any processes where quartz or any other form of silicon dioxide or an asbestos silicate is present in powdered form, or at work involving exposure to lead or any of its compounds in any form, or at work involving exposure to benzol or any benzol compound which is volatile or which can penetrate the skin, or at work in spray painting, or in the handling of unsterilized hides or animal or human hair. Nor shall any minor under eighteen be employed or permitted to work in, about or in connection with any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, sold, or dispensed, or in a pool or billiard room: Provided, however, that this section shall not prohibit a minor under the age of eighteen years from working in any establishment where beer is sold and not consumed on the premises, and to which has been issued only an "off premises" license for the sale of beer. Nor shall any girl under the age of eighteen years be employed, permitted or allowed to work as a messenger in the distribution or delivery of goods or messages for any person, firm or corporation engaged in the business of transmitting or delivering goods or messages. Nor shall any minor under eighteen years of age be employed, permitted, or allowed to work in any place of employment, or at any occupation hazardous or injurious to the life, health, safety or welfare of such minor. It shall be the duty of the State Department of Labor and the said State Department of Labor shall have power, jurisdiction, and authority, after due notice and after hearings duly held, to issue general or special orders, which shall have the force of law, prohibiting the employment of such minors in any place of employment or at any occupation hazardous or injurious to the life, health, safety or welfare of such minors. (1937, c. 317, s. 7; 1943, c. 670.)

§ 110-8. Employment of minors in street trades; sales or distribution of newspapers, etc.—No boy under fourteen years of age and no girl under eighteen years of age shall distribute, sell, expose or offer for sale newspapers, magazines, periodicals, candies, drinks, peanuts, or other merchandise in any street or public place, or exercise the trade of bootblack in any street or public place. No boy under sixteen years of age shall be employed or permitted or allowed to work at any of the trades or occupations mentioned in this section after seven P.M. or before six A.M., or unless he has an employment certificate issued in accordance with § 110-9. The State Commissioner of Labor shall have authority to make, promulgate and enforce such rules and regulations as he may deem necessary for the enforcement of this section, not inconsistent with this article or existing law.

Nothing in this section shall be construed to prevent male persons over fourteen years of age from distributing newspapers, magazines and periodicals on fixed routes, seven days per week: Provided, that such persons shall not be employed nor allowed to work after eight o'clock P.M. and before five o'clock

A.M., and that the hours of work and the hours in school do not exceed eight in any one day, except boys twelve years of age and over who have secured a certificate from the Department of Labor for the sale or distribution of newspapers, magazines or periodicals: Provided further, that such person shall not be permitted or allowed to work more than four hours per day nor more than twenty-four hours per week: Provided further, that nothing in this article shall be construed to prevent boys twelve years of age and over, upon securing a proper certificate from the Department of Labor, from being employed outside school hours in the sale or distribution of newspapers, magazines and periodicals (where not more than seventy-five customers are served in one day): Provided, that such boys shall not be employed between the hours of seven o'clock P.M. and six o'clock A.M., nor for more than ten hours in any one week. (1937, c. 317, s. 8.)

§ 110-9. Employment certificate required. — Before any minor under eighteen years of age shall be employed, permitted or allowed to work in, about or in connection with any gainful occupation, the person employing such minor shall procure and keep on file an employment certificate for such minor, issued as hereinafter prescribed. In case of a minor engaged in street trade where the relationship of employer and employee does not exist between such minor and the supplier of the merchandise which the minor sells, the parent or guardian of such minor shall be deemed the employer of such minor and shall procure and keep on file the employment certificate herein required. (1937, c. 317, s. 9.)

Newsboy Not Employee. — A newsboy engaged in selling papers is not an employee of the newspaper within the meaning of that term as used in the Workmen's Compensation Act, the newsboy not being on the newspaper's payroll and being without authority to solicit subscriptions and being free to select his own methods of effecting sales, although some degree of supervision was exercised by the newspaper. Creswell v. Charlotte News Publishing Co., 204 N.C. 380, 168 S.E. 408 (1933).

§ 110-10. Officers authorized to issue certificates.—The employment certificate required by this article shall be issued only by county or city directors of public welfare in such form and under such conditions as may be prescribed by the State Department of Labor. (1937, c. 317, s. 10; 1961, c. 186.)

§ 110-11. Refusal and revocation of employment certificate. — The person designated to issue employment certificates may refuse to grant such certificate, or may revoke such certificate after issuance if, in his judgment, the best interests of the minor would be served by such refusal or revocation. Employer, parent or guardian of the minor whose employment certificate has been refused or revoked may appeal to the Commissioner of Labor. (1937, c. 317, s. 11.)

§ 110-12. Method of issuing employment certificates. — The person designated to issue employment certificates shall issue such certificates only upon the application in person of the minor desiring employment, and after having approved and filed the following papers:

(1) A promise of employment signed by the prospective employer or by someone duly authorized by him, setting forth the specific nature of the occupation in which he intends to employ such minor, and the number of hours per day and days per week which said minor shall be employed.

(2) Evidence of age showing that minor is of the age required by this article, which evidence shall consist of one of the following proofs of age and shall be required in the order herein designated, as follows:

a. A duly attested transcript of the birth certificate filed according to law with a registrar of vital statistics, or other officer charged with the duty of recording births; or

b. A baptismal certificate or transcript of the record of baptism, duly certified, and showing the date and place of birth; or

c. Other documentary record of age (other than a school record or an affidavit of age) such as a Bible record, passport transcript thereof, duly certified, or life insurance policy which shall appear to the satisfaction of the issuing officer to be good and sufficient evidence of age; or

d. In the case none of the aforesaid proofs of age shall be obtainable, and only in such case, the issuing officer may accept the signed statement of the physician authorized to make the physical examinations required by this section, stating that, after examination, it is his opinion that the minor has attained the age required by law for the occupation in which he expects to engage. Such statement shall be accompanied by an affidavit, signed by the minor's parents or guardian, certifying to the name, date and place of birth of the minor and that the proofs of age specified in the preceding subdivisions of this section cannot be produced.

(3) A statement of physical fitness, signed by a public health, public school or other physician assigned to this duty by the issuing officer with the approval of the State Department of Labor, setting forth that such minor has been thoroughly examined by such physician and that he is either physically fit to be employed in any legal occupation, or that he is physically fit to be employed under certain limitations, specified in the statement. If the statement of physical fitness is limited, the employment certificate issued thereon shall state clearly the limitations upon its use, and shall be valid only when used under the limitations so stated. The minor shall not be charged a fee for such examination or statement of physical fitness. The method of making such examinations shall be prescribed by the State Department of Labor.

(4) A school record signed by the principal of the school which the minor has last attended or by someone duly authorized by him, giving the full name, date of birth, grade last completed, and residence of the minor.

The employment certificate shall be delivered to the prospective employer of the minor for whom the employment certificate is issued, and such certificate shall be valid only for the employer named therein and for the occupation designated in the promise of employment. (1937, c. 317, s. 12.)

Prior Law.—For decisions under former law, see Rolin v. R. J. Reynolds Tobacco Co., 141 N.C. 300, 53 S.E. 891 (1906); Williamson v. Old Dominion Box Co., 205 N.C. 350, 171 S.E. 335 (1933).

§ **110-13. Employment certificate as evidence.**—Said employment certificate duly issued shall be conclusive evidence of the age of the minor for whom issued in any proceeding involving the employment of the minor under the child labor or workmen's compensation law or any other labor law of the State, as to any act occurring subsequent to its issuance. (1937, c. 317, s. 13.)

§ **110-14. Regular and vacation employment certificates.** — Employment certificates shall be of two kinds, regular certificates permitting employment during school hours, and vacation certificates, permitting employment during the school vacation and during the school term at such time as the public schools are not in session. (1937, c. 317, s. 14.)

§ **110-15. Duties of employers in regard to employment certificates.**—Every employer receiving an employment certificate shall, during the period of the minor's employment, keep such certificate on file at the place of employment and accessible to any certificate-issuing officer, attendance officer, inspector, or other person authorized to enforce this article. The failure of any employer to produce for inspection such employment certificate shall be prima facie evidence of the unlawful employment of the minor. (1937, c. 317, s. 15.)

§ **110-16. Certificates of age.**—Upon request, it shall be the duty of the officer authorized to issue employment certificates to issue to any person between the ages of eighteen and twenty-one desiring to enter employment a certificate of age upon presentation of the same proof of age as is required for the issuance of employment certificates under this article, and such certificate duly issued shall be conclusive evidence of the age of the minor for whom issued in any proceeding involving the employment of the minor under the child labor or workmen's compensation law or any other labor law of the State, as to any act occurring subsequent to its issuance. (1937, c. 317, s. 16.)

§ **110-17. State supervision of the issuance of employment certificates.**—The State Department of Labor shall prescribe such rules and regulations for the issuance of employment certificates and age certificates as will promote uniformity and efficiency in the administration of this article. It also shall supply to local issuing officers all blank forms to be used in connection with the issuance of such certificates. Duplicates of each employment or age certificate shall be mailed by the issuing officer to the State Department of Labor within one week after issuance. The State Department of Labor may revoke any such certificate if in its judgment it was improperly issued or if the minor is illegally employed. If the certificate be revoked, the issuing officer and the employer shall be notified of such action in writing, and such minor shall not thereafter be employed or permitted to work until a new certificate has been legally obtained. (1937, c. 317, s. 17.)

§ **110-18. Rules and regulations.** — The Commissioner of Labor of North Carolina shall have the power to make such rules and regulations for enforcing and carrying out the provisions of this article as may be deemed necessary by said Commissioner. (1937, c. 317, s. 18.)

§ **110-19. Inspection and prosecutions.**—It shall be the duty of the State Department of Labor and of the inspectors and agents of said State Department of Labor to enforce the provisions of this article, to make complaints against persons violating its provisions, and to prosecute violations of the same. The said State Department of Labor, its inspectors and agents shall have authority to enter and inspect at any time any place or establishment covered by the article, and to have access to employment certificates kept on file by the employer and such other records as may aid in the enforcement of this article. School attendance officers are likewise empowered to visit and inspect places where minors may be employed.

Any person authorized to enforce this article may require an employer of a minor for whom an employment certificate is not on file to either furnish him within ten days the evidence required for an employment certificate showing that the minor is at least eighteen years of age, or to cease to employ or permit or allow such minor to work. (1937, c. 317, s. 19.)

§ **110-20. Penalties.**—Whoever employs or permits or allows any minor to be employed or to work in violation of this article, or of any order or ruling issued under the provisions of this article, or obstructs the State Department of Labor, its officers or agents, or any other persons authorized to inspect places of employment under this article, and whoever having under his control or custody any minor, permits or allows him to be employed or to work in violation of this article, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars ($5.00) nor more than fifty dollars ($50.00), or imprisonment for not more than thirty days, or both such fine and imprisonment. Each day during which any violation of this article continues after notice from the State Department of Labor to the proprietor, manager, or other officer of the partnership, firm or corporation, shall constitute a separate and distinct offense, and the employment of any minor in violation of the article shall, with respect to each minor so employed, constitute a separate and distinct offense. The penalties specified in this article may be recovered by the State in an action for debt brought before any court of competent jurisdiction, or through criminal proceedings, as may be deemed proper. (1937, c. 317, s. 20.)

Cited in Swaney v. Peden Steel Co., 259 N.C. 531, 131 S.E.2d 601 (1963).

Article 2.

Juvenile Courts.

§ **110-21. Exclusive original jurisdiction over children.**—The superior courts shall have exclusive original jurisdiction of any case of a child less than sixteen years of age residing in or being at the time within their respective districts:

(1) Who is delinquent or who violates any municipal or State law or ordinance or who is truant, unruly, wayward, or misdirected, or who is disobedient to parents or beyond their control, or who is in danger of becoming so; or

(2) Who is neglected, or who engages in any occupation, calling, or exhibition, or is found in any place where a child is forbidden by law to be and for permitting which an adult may be punished by law, or who is in such condition or surroundings or is under such improper or insufficient guardianship or control as to endanger the morals, health, or general welfare of such child; or

(3) Who is dependent upon public support or who is destitute, homeless, or abandoned, or whose custody is subject to controversy.

When jurisdiction has been obtained in the case of any child, unless a court order shall be issued to the contrary, or unless the child be committed to an institution supported and controlled by the State, it shall continue for the purposes of this article during the minority of the child. The duty shall be constant upon the court to give each child subject to its jurisdiction such oversight and control in the premises as will conduce to the welfare of such child and to the best interest of the State. (1919, c. 97, s. 1; C. S., s. 5039.)

Cross References.—As to domestic relations court, see § 7-101 et seq. As to habeas corpus for custody of children in certain cases, see § 17-39. As to jurisdiction of superior court in all cases where one of the parents is seeking custody, see § 50-13 and note thereto.

Constitutionality. — This article is held to be a constitutional and valid enactment. State v. Burnett, 179 N.C. 735, 102 S.E. 711 (1920); In re Coston, 187 N.C. 509, 122 S.E. 183 (1924).

The statute creating juvenile courts in the several counties of this State is valid. Winner v. Brice, 212 N.C. 294, 193 S.E. 400 (1937).

The question as to the extent to which a child's constitutional rights are impaired by a restraint upon its freedom has arisen many times with reference to statutes authorizing the commitment of dependent, incorrigible, or delinquent children to the custody of some institution, and the decisions appear to warrant the statement, as a general rule, that, where the investigation is into the status and needs of the child, and the institution to which he or she is committed is not of a penal character, such investigation is not one to which the constitutional guaranty of a right to trial by jury extends, nor does the restraint put upon the child amount to a deprivation of liberty within the meaning of the Declaration of Rights, nor is it a punishment for crime. State v. Frazier, 254 N.C. 226, 118 S.E.2d 556 (1961).

The objection that this article ignores or unlawfully withholds the right to a trial by jury cannot be sustained. State v. Burnett, 179 N.C. 735, 102 S.E. 711 (1920); State v. Frazier, 254 N.C. 226, 118 S.E.2d 556 (1961).

Purpose. — This section undertakes to give the control and environment that may lead to the reformation of delinquent children and enable them to become law-abiding and useful citizens, and a support and not a hinderance to the Commonwealth. State v. Burnett, 179 N.C. 735, 102 S.E. 711 (1920); State v. Frazier, 254 N.C. 226, 118 S.E.2d 556 (1961).

Juvenile courts were created and organized for the purpose of administering this law, and for the original hearing and determination of matters and causes within its scope, and as such were empowered to make such orders and decrees therein as the right and justice of the case may require, with right of appeal. In re Prevatt, 223 N.C. 833, 28 S.E.2d 564 (1944).

The sections of this article are interrelated and interdependent, and the intent thereof is so to be interpreted. State v. Ferguson, 191 N.C. 668, 132 S.E. 644 (1926).

Powers Conferred.—This article primarily confers upon juvenile courts the power to initiate and examine and pass upon cases coming under its provisions. These powers are both judicial and administrative, and when, having acquired jurisdiction, a juvenile court has investigated the case and determined and adjudged that the child comes within the provisions of the law and shall be controlled and dealt with as a ward of the State, this being in the exercise of the judicial powers in the premises, fixes the status of the child, and the condition continues until the child is of age, unless and until such adjudication is modified or reversed by a further judgment of the court itself or by the superior court judge hearing the cause on appeal as the article provides. In re Blalock, 233 N.C. 493, 64 S.E.2d 848, 25 A.L.R.2d 818 (1951).

This section does not deal with delinquent children as criminals. State v. Burnett, 179 N.C. 735, 102 S.E. 711 (1920); State v. Frazier, 254 N.C. 226, 118 S.E.2d 556 (1961).

But as Wards of the State.—See State v. Burnett, 179 N.C. 735, 102 S.E. 711 (1920); State v. Frazier, 254 N.C. 226, 118 S.E.2d 556 (1961).

Duty Imposed. — This section imposes upon the court the constant duty to give to each child subject to its jurisdiction such oversight and control in the premises as will conduce to the welfare of such child and to the best interest of the State. In re Morris, 224 N.C. 487, 31 S.E.2d 539 (1944); In re Blalock, 233 N.C. 493, 64 S.E.2d 848, 25 A.L.R.2d 181 (1951).

Placement in Public and Private Institutions.—This article confers jurisdiction on the courts to place children under its jurisdiction in public and private institutions in proper instances. Winner v. Brice, 212 N.C. 294, 193 S.E. 400 (1937).

Allegations Showing Jurisdiction.—Allegations of a petition, admitted by demurrer, that the children in question were each under sixteen years of age, resided in the county and were subject to such conditions and improper guardianship and control as to endanger their morals, health, and welfare, and that petitioner was entitled to their custody as their guardian under a deed executed by their father, for the purpose of placing them in a private institution in accordance with the wishes of their father, are sufficient to show exclusive original jurisdiction of the children, for the purposes of the statute, in the juvenile court of the county. Winner v. Brice, 212 N.C. 294, 193 S.E. 400 (1937).

Criminal Jurisdiction. — The juvenile court, as a separate part of the superior court, is given by this section, among other things, the sole power to investigate charges of misdemeanors, and of felonies with punishment not exceeding a ten-year imprisonment, made against children between the ages of fourteen and sixteen years at the time of the offense committed, and excludes the jurisdiction of the justice of the peace to bind them over to the superior court in such instances. State v. Coble, 181 N.C. 554, 107 S.E. 132 (1926).

By this article, in case of children under the age of sixteen years charged with being delinquent by reason of the violation of the criminal laws of the State, it is provided and intended to be provided, in effect: (a) That children under fourteen years of age are no longer indictable as criminals, but must be dealt with as wards of the State, to be cared for, controlled and disciplined with a view to their reformation. (b) That in case of children between fourteen and sixteen years of age, and as to felonies, whenever the punishment cannot exceed ten years, they may, if the instance requires it, be bound over to the superior court to be prosecuted under the criminal law appertaining to the charge. (c) That in case of children from fourteen to sixteen years of age as to felonies, whenever the punishment is ten years and over they are amenable to prosecution for crime as in case of adults. State v. Burnett, 179 N.C. 735, 102 S.E. 711 (1920).

Assault with Deadly Weapon.—The juvenile court has exclusive jurisdiction over investigation of a charge of an assault with a deadly weapon, inflicting a serious injury, made by a child within sixteen years of age, and where a justice of the peace has assumed jurisdiction and bound the defendant over to the superior court, the case will, on motion, be removed to the juvenile court, to be proceeded with as the statute directs, though at the latter date the offender's age may be more than sixteen years. State v. Coble, 181 N.C. 554, 107 S.E. 132 (1921).

Jurisdiction to determine the right of custody of an infant as between persons with whom an infant had been placed with a view to adoption and welfare officers seeking to place the infant with his family, is within the exclusive jurisdiction of the juvenile court. In re Thompson, 228 N.C. 74, 44 S.E.2d 475 (1947).

This section gives exclusive original jurisdiction to the superior court where the custody of a child less than sixteen years of age is in question and establishes the juvenile courts as separate, though not necessarily independent, part of the superior courts for the administration of the act, and makes the clerks of the superior courts judges of the juvenile courts. In re Hamilton, 182 N.C. 44, 108 S.E. 385 (1921).

And Exceptions Thereto.—The juvenile court, under this section, has exclusive original jurisdiction of a child under sixteen years of age "whose custody is subject to controversy" in all cases except those in which the superior court is given jurisdiction by § 17-39 or 50-13. In re Custody of Simpson, 262 N.C. 206, 136 S.E.2d 647 (1964).

Under the 1949 amendment to § 50-13 either parent may institute a special proceeding to obtain custody of his or her child in cases not theretofore provided for by § 50-13 or 17-39, and this amendment authorizes a special proceeding (now civil action) by the mother of an illegitimate child to obtain its custody from her aunt, with whom she had entrusted the child, and thus restricts the jurisdiction of the juvenile court in such instances. In re Cranford, 231 N.C. 91, 56 S.E.2d 35 (1949).

Section Not Inconsistent with § 17-39.—Original jurisdiction to adjudge a child delinquent or neglected having been conferred on the juvenile court by this section, nevertheless this section does not repeal § 17-39, and is not inconsistent therewith. No limitation is placed by this section upon the jurisdiction previously conferred upon the superior court by § 17-39 to issue writs of habeas corpus and to hear and determine the custody of children of parents separated but not divorced. In re Prevatt, 223 N.C. 833, 28 S.E.2d 564 (1944).

Duration of Jurisdiction. — Where the jurisdiction of the juvenile court has once attached it remains during the minority of the youthful offender, for the purpose of his correction and reformation. State v. Coble, 181 N.C. 554, 107 S.E. 132 (1921); In re Coston, 187 N.C. 509, 122 S.E. 183 (1924).

Abandoned Child. — Under this section, the clerk of the superior court, in his capacity as juvenile judge, has exclusive jurisdiction of an abandoned child under sixteen years of age. In re Custody of Simpson, 262 N.C. 206, 136 S.E.2d 647 (1964).

Willful Neglect of or Refusal to Support Illegitimate Child.—Where defendant is over sixteen years of age during the time he is charged with willfully neglecting or refusing to support his illegitimate child, the superior court and not the juvenile court has jurisdiction, notwithstanding that conception of the child occurred prior to defendant's sixteenth birthday. State v. Bowser, 230 N.C. 330, 53 S.E.2d 282 (1949).

A court awarding exclusive custody of a minor assumes the obligation to see that its confidence is not abused, and the court is justified in proceeding to that end with an inquiry ex mero motu or at the instance of an interested party. In re Morris' Custody, 225 N.C. 48, 33 S.E.2d 243 (1945).

Where the father of a minor child brings a writ of habeas corpus in the superior court for the custody of the child, the respondent being the maternal grandmother of the child in whose care the child was left by its mother, the superior court has original jurisdiction, and the respondent's motion to transfer the hearing from the superior court to the juvenile court is properly overruled. In re Ten Hoopen, 202 N.C. 223, 162 S.E. 619 (1932).

Voluntary Surrender of Custody to Juvenile Court.—Where the mother of minor children, for the purpose of having their custody given to their paternal grandmother, the father being dead, voluntarily came before the juvenile court and signed a paper turning over the custody of her children to such court, the court obtained jurisdiction during such time as the custody and control of the children was necessary, notwithstanding the absence of the statutory requirements in cases where the juvenile court proceeds directly, and the mother might not thereafter attack, on the ground of want of jurisdiction, a subsequent order of the juvenile court taking the custody away from the grandmother for change of condition and placing the children in the custody of an institution. In re Bumgarner, 228 N.C. 639, 46 S.E.2d 833 (1948).

Modification of Foreign Divorce Decree Awarding Custody of Children.—Where a Virginia divorce decree awarding custody of children was subject to modification when changing conditions so required, the superior court of the county where the children resided had authority to examine the conditions then existing and, with the welfare of the children as its guide, determine the present right to custody. Cleeland v. Cleeland, 249 N.C. 16, 105 S.E.2d 114 (1958).

Applied in McEachern v. McEachern, 210 N.C. 98, 185 S.E. 684 (1936).

§ 110-21.1. Jurisdiction of juvenile courts over violations of motor vehicle laws. — All jurisdiction heretofore vested in the superior courts by the provisions of G.S. 20-218.1 is hereby vested in the juvenile courts of the State of North Carolina. (1949, c. 163, s. 2.)

Editor's Note.—Former § 20-218.1 referred to in the above section provided: "No juvenile court or domestic relations court of this State shall have jurisdiction over any offense involving violation of any of the motor vehicle laws or of any of the laws relating to the operation of motor vehicles on the highways of this State when such offense has been committed by a person over fifteen years of age. Any such offense shall be within the jurisdiction of the court or courts which would have jurisdiction if the offender were over sixteen years of age."

§ 110-22. Juvenile courts created; part of superior court; joint county and city courts. — There shall be established in each county of the State a separate part of the superior court of the district for the hearing of cases coming within the provisions of this article. Such part of the superior court shall be called the juvenile court of .... county.

The clerk of the superior court of each county in the State shall serve ex officio as judge of the juvenile court in the hearing of cases coming within the provisions of this article, in which cases the child or children concerned therein reside in or are at the time within such county: Provided, that with the consent in writing or upon the request in writing of the clerk of the superior court of any county in the State, the board of county commissioners of such county shall have the right in its discretion at any time to appoint some other competent and qualified individual to serve as judge of the juvenile court in lieu of the clerk of the superior court. The judge so appointed shall serve for a term to run concurrent with the term of the clerk of the superior court, or the remainder of such term, and the county shall pay said judge such sum as the county commissioners of said county shall deem just and proper. Proceedings in such cases may be initiated before such judge, and in hearing such cases such judge shall comply with all the requirements and conform to the procedure provided in this article: Provided, the board of commissioners of any county shall have the right in their discretion to cooperate with the governing body of such city in the election of a judge of a juvenile court provided for in § 110-44, which judge when so elected shall perform all the duties, and possess all the powers and jurisdiction conferred by this article upon the clerk of the superior court, as well as that conferred upon the judge of the juvenile court of such cities by this article; such judge to be so elected by the joint action of the governing bodies of such city and county shall hold office for the term of one year, and until his successor shall be duly elected, and the county availing itself of the provisions of this section shall pay said judge for services rendered the county (outside of city) such sum as the county commissioners of said county shall deem just and proper. (1919, c. 97, s. 2; C. S., s. 5040; Ex. Sess. 1920, c. 85; 1945, c. 186, s. 2; 1955, c. 1043, s. 1; 1957, c. 359.)

Local Modification. — Buncombe: 1935, c. 220; 1941, c. 208, s. 3; Durham: 1945, c. 503; Forsyth: 1935, c. 385; 1941, c. 110; Mecklenburg: 1937, c. 251; Stokes: 1965, c. 821.

Editor's Note.—Section 3½ of the 1955 amendatory act, which also amended § 110-23, provides that the act shall not apply to the following counties: Brunswick, Buncombe, Burke, Caswell, Catawba, Davie, Forsyth, Franklin, Graham, Guilford, Halifax, Haywood, Jones, Lenoir, Macon, Madison, McDowell, Nash, Onslow, Person, Pitt, Randolph, Transylvania, Vance, Warren and Watauga.

Session Laws 1957, cc. 363 and 454, provide that Henderson and Robeson, respectively, be inserted in the list of counties set out in the preceding paragraph.

For comment on the 1945 amendment, see 23 N.C.L. Rev. 341.

Cited in State v. Bowser, 230 N.C. 330, 53 S.E.2d 282 (1949).

§ 110-22.1. Validation of acts of superior court clerk serving as judge of county juvenile court.—All of the acts and judgments of the several clerks of the superior court of the State while serving as judge of the juvenile court of their counties since the 18th day of May, 1955, are hereby in all respects ratified, confirmed and validated. (1957, c. 1042.)

§ 110-23. Definitions of terms.—(a) The term "adult" shall mean any person sixteen years of age or over.

(b) The term "child" shall mean any minor less than sixteen years of age.

(c) The term "court" when used in this article without modification shall refer to the juvenile courts to be established as herein provided.

(d) The term "judge" when used in this article shall refer to the clerk of the superior court acting as judge of the juvenile court, or to the other appointed judge, or to the judge of the joint city and county juvenile court elected as provided in § 110-22. (1919, c. 97, s. 3; C. S., s. 5041; 1955, c. 1043, s. 2.)

Editor's Note.—As to counties to which the 1955 amendatory act does not apply, see note to § 110-22.

Applied in In re Prevatt, 223 N.C. 833, 28 S.E.2d 564 (1944). State v. Coble, 181 N.C. 554, 107 S.E. 132 (1921).

Cited in In re McGraw, 228 N.C. 46, 44 S.E.2d 349 (1947); In re Blalock, 233 N.C. 493, 64 S.E.2d 848, 25 A.L.R.2d 818 (1951).

§ 110-24. Sessions of court; records; general provisions. — Sessions of the court shall be held at such times and in such places within the county as the judge shall from time to time determine. In the hearing of any case coming within the provisions of this article the general public may be excluded and only such persons admitted thereto as have a direct interest in the case. Sessions of the court shall not be held in conjunction with any other business of the superior court, and children's cases shall not be heard at the same time as those against adults.

The court shall maintain a full and complete record of all cases brought before it, to be known as the juvenile record. All records may be withheld from indiscriminate public inspection in the discretion of the judge of the court, but such record shall be open to inspection by the parents, guardians, or other authorized representatives of the child concerned. No adjudication under the provisions of this article shall operate as a disqualification of any child for any public office, and no child shall be denominated a criminal by reason of such adjudication, nor shall any such adjudication be denominated a conviction.

This article shall be construed liberally and as remedial in character. The powers hereby authorized are intended to be general and for the purpose of effecting the beneficial purposes herein set forth. It is the intention of this article that in all proceedings under its provisions the court shall proceed upon the theory that a child under its jurisdiction is the ward of the State and is subject to the discipline and entitled to the protection which the court should give such child under the circumstances disclosed in the case. (1919, c. 97, s. 4; C. S., s. 5042.)

Quoted in part in In re Blalock, 233 N.C. 493, 64 S.E.2d 848, 25 A.L.R.2d 818 (1951).

§ **110-25. Petition to bring child before court.** — Any person having knowledge or information that a child is within the provisions of this article and subject to the jurisdiction of the court, may file with the court a petition verified by affidavit, stating the alleged facts which bring such child within such provisions. The petition shall set forth the name and residence of the child and of the parents, or the name and residence of the person having the guardianship, custody, or supervision of such child, if the same be known or ascertained by the petitioner, or the petition shall state that they are unknown, if that be the fact. (1919, c .97, s. 5; C. S., s. 5043.)

Where the record does not disclose that a petition to the juvenile court was originally filed by appellant, as provided in this section, he may not be heard to complain of irregularity in this respect, since the proceeding was instituted at his instance, and he was personally present at the hearing. In re Prevatt, 223 N.C. 833, 28 S.E.2d 564 (1944).

§ **110-25.1. Investigations and petitions involving certain neglected illegitimate children; hearings; disposition of children.**—When it appears from the birth certificates filed with the Bureau of Vital Statistics that a child has been born to an unwed mother who had previously given birth to two or more children out of wedlock, said Bureau shall forward copies of such birth certificates to the local health director of the county of such mother's residence; and whenever it shall come to the attention of any local official that a child has been born to a woman by a father other than her husband, which woman had previously given birth to two or more children out of wedlock, such local official shall furnish such information to the local health director of the county of residence of such woman. The local health director to whom such information may come, shall thereupon, by registered or certified mail, notify such mother that she is, or may be, subject to the provisions of this section, and shall instruct her to report to the county director of public welfare in the county of her residence for consultation and advice within fifteen (15) days after receipt of such letter. A copy of such letter shall be mailed to the county director of public welfare in the county of such mother's residence. If the mother fails to report to the county director of public welfare within fifteen (15) days following receipt of the letter, then the county director shall thereupon begin the investigation hereinafter required.

In the course of the consultation and advice hereinabove provided for, the county director of public welfare shall make, or cause to be made through his own staff or through the staff of a private social agency, an investigation for the purpose of determining if such child, and any other children living with such mother, are living under such conditions, or are under such improper or insufficient guardianship or control, as to endanger the health or general welfare of any such child or children, within the meaning of subdivision (2) of G.S. 110-21. If, upon such investigation, the county welfare director is of the opinion that such living conditions or surroundings, or such improper or insufficient guardianship or control of such child or children, are such as to endanger the health or general welfare of any such child or children, then said director or some person under his supervision, or the personnel of the private social agency hereinabove referred to, shall consult and advise with the mother of such child or children for the purpose and to the end that such conditions and surroundings be improved, and proper and sufficient guardianship and control be established. If, after such consultation and advice with said mother, such director is of the opinion that the health or general welfare of any such child or children is and will continue to be in danger, then such director shall thereupon file with the court a verified petition stating the alleged facts which bring such child or children within the provisions of the section, which said petition shall also contain all other information required by the provisions of G.S. 110-25. Upon the filing of such petition, the issuance and service of summons and the making of any interlocutory orders shall be made in accordance with the provisions of G.S. 110-26, 110-27, and 110-28.

After having given due notice, as provided by G.S. 110-26, the court shall conduct a hearing in accordance with the provisions of G.S. 110-29, and if, upon said hearing, the court is satisfied that the health or general welfare of any such child or children is in danger, and that such child or children are in need of more suitable guardianship, then the court may thereupon take such action as, in its discretion, it deems proper and suitable, and as provided in G.S. 110-29, subdivisions (2), (3), (4) or (5). (1963, c. 1259.)

Cross Reference.—As to when consent of mother of illegitimate child is not necessary to the adoption of such child, see § 48-6.1.

§ **110-26. Issuance of summons; traveling expenses allowed.**—Upon the filing of the petition or upon the taking of a child into custody, the court may forthwith, or after an investigation by a probation officer or other person, cause to be issued a summons signed by the judge or the clerk of the court directed to the child, unless such child has been taken into custody, and to the parent, or, in case there is no parent, to the person having the guardianship, custody, or supervision of the child, or the person with whom the child may be, requiring them to appear with the child at the place and time stated in the summons to show cause why the child should not be dealt with according to the provisions of this article.

The judge may in his discretion authorize the payment of necessary traveling expenses incurred by any witness or person summoned or otherwise required to appear at the hearing of any case coming within the provisions of this article. Such expenses shall be a charge upon the county in which the petition is filed. (1919, c. 97, s. 6; C. S., s. 5044; 1939, c. 50.)

§ **110-27. Custody of child may be immediate; release; bail.**—If it appears from the petition that the child is embraced within subdivision (1) of § 110-21, or is in such condition or surroundings that the welfare of the child requires that its custody be immediately assumed, the court may endorse or cause to be endorsed upon the summons a direction that the officer serving the same shall at once take such child into his custody.

In the case of any child who has been taken into custody or pending the final disposition of any case, the child may be released in the custody of a parent or other person having charge of the child or in the custody of a probation officer or other person appointed by the court, to be brought before the court at the time designated. Any child embraced in this article may be admitted to bail as provided by law. When not released as herein provided, such child, pending the hearing of the case, shall be detained in such place of detention as hereinafter provided for. (1919, c. 97, s. 7; C. S., s. 5045.)

§ **110-28. Service of summons.**—Service of summons shall be made personally by reading to and leaving with the person summoned a true copy thereof: Provided, that if the court is satisfied that reasonable but unsuccessful effort has been made to serve the summons personally upon any of the parties named therein, or if it shall appear to the satisfaction of the court that it is impracticable to serve a summons personally upon any of them, the court may make an order providing for service of the summons by registered mail or by publication or otherwise in such manner as the judge shall determine. It shall be sufficient to confer jurisdiction if service is effected at any time before the time fixed in the summons for the return thereof; but the court, if requested by the child or a parent, or, in case there is no parent, by the person having the guardianship, custody or supervision of the child, shall not proceed with the hearing earlier than three days after the service. Failure to serve a summons upon any person other than said child shall not impair the jurisdiction of the court to proceed in cases arising under subdivision (1) of § 110-21, provided that for good cause shown the court shall have made an order dispensing with such service.

If the person summoned as herein provided shall fail without reasonable cause to appear and abide the order of the court or bring the child, he may be proceeded against as for contempt of court. In case the summons cannot be served or the party served fails to obey the same, and in any case when it shall be made to appear to the court that such summons will be ineffectual or that the welfare of the child requires that he shall be brought forthwith into the custody of the court, a warrant may be issued on the order of the court either against the parent or guardian or other person having custody of the child or with whom the child may be, or against the child himself.

The sheriff or other lawful officer of the county in which the action is taken shall serve all papers as directed by the court, but the papers may be served by any person delegated by the court for that purpose. (1919, c. 97, s. 8; C. S., s. 5046.)

When Summons to Parents Unnecessary.—Where the juvenile court has examined into the condition of a child and has adjudged that the child is of wandering or dissolute parents, and living with its poor and dependent grandparents, who had acquiesced in the investigation and its results, it it unnecessary to the valid adjudication fixing the child as a ward of the State and taking its custody accordingly, that the parents should have been notified to be present at the investigation, though such course is to be commended when the child is living with its parents or under their control, or they are living at the time within the jurisdiction of the court. In re Coston, 187 N.C. 509, 122 S.E. 183 (1924).

Cited in In re Custody of Simpson, 262 N.C. 206, 136 S.E.2d 647 (1964).

§ **110-29. Hearing; disposition of child.**—Upon the return of the summons or other process or after any child has been taken into custody, at the time set for the hearing, the court shall proceed to hear and determine the case in a summary manner. The court may adjourn the hearing from time to time and inquire into the habits, surroundings, condition and tendencies of the child so as to enable the court to render such order or judgment as shall best conserve the welfare of the child and carry out the objects of this article. In all cases the nature of the proceedings shall be explained to the child and to the parents or the guardian or person having the custody or the supervision of the child. At any stage of the case the court may, in its discretion, appoint any suitable person to be the guardian ad litem of the child for the purposes of the proceeding.

The court, if satisfied that the child is in need of the care, protection or discipline of the State, may so adjudicate, and may find the child to be delinquent, neglected, or in need of more suitable guardianship. Thereupon the court may:

(1) Place the child on probation subject to the conditions provided hereinafter; or

(2) Commit the child to the custody of a relative or other fit person of good moral character, subject, in the discretion of the court, to the supervision of a probation officer and the further orders of the court; or

(3) Commit the child to the custody of the county department of public welfare of the county wherein said child has legal residence to be placed by said department in a suitable home as designated in subdivision (4) of this section. The county department of public welfare to which custody is awarded shall be responsible for the general oversight and supervision of the child and shall pay the cost of care for said child. The juvenile court taking jurisdiction shall have the authority to determine the legal residence of the child and to award custody of said child to the county welfare department of the county which has been determined by the court to be the legal residence of the child. Provided, however, that if it should appear to the judge of the juvenile court exercising jurisdiction over said child that the child might be a legal resident of some county other than the county in which said court is sitting, that the judge of said court shall not enter any final

order pertaining to the custody of said child until at least ten days' notice shall have been given to the county welfare department of any county which shall appear to be the county of legal residence of said child. The county welfare department thus given ten days' notice shall have an opportunity to appear and show cause, if any it has, why the legal residence of said child should not be found to be in its county; or

(4) Commit the child to a suitable institution maintained by the State or any subdivision thereof, or to any suitable private institution, society or association incorporated under the laws of the State and approved by the State Board of Public Welfare authorized to care for children, or to place them in suitable family homes; or

(5) Render such further judgment or make such further order of commitment as the court may be authorized by law to make in any given case.

(6) If a child of fourteen years of age be charged with a felony for which the punishment as now fixed by law cannot be more than ten years in prison his case shall be investigated by the probation officer and the judge of the juvenile court as provided for in this article, unless it appears to the judge of the juvenile court that the case should be brought to the attention of the judge of the superior court, in which case the child shall be held in custody or bound to the next term of the superior court as now provided by law. (1919, c. 97, s. 9; C. S., s. 5047; 1929, c. 84; 1957, c. 100, s. 1; 1963, c. 631.)

Cross Reference. — As to authority to commit offenders to reformatory, see § 134-10.

Editor's Note. — The 1963 amendment rewrote subdivision (3) of this section.

Jurisdiction in Felonies.—In reference to the disposition of children charged as delinquents by reason of having violated a State or municipal law, and that alone, it is provided in this section that a child of 14 years, charged with a felony in which the punishment, as now fixed by law, cannot exceed 10 years, the judge of the juvenile court may, if the case be of a nature to require it, bind such child over to the next term of the superior court, it being the clear and necessary inference that, as to children of 14 years and upward, and in case of felonies when the punishment may exceed 10 years, the juvenile department of the superior court is without jurisdiction of the offense. As to children of 14 years and over, and in case of felonies in which the punishment may be more than 10 years, they shall, in all instances, be subject to prosecution for crime as in case of adults. State v. Burnett, 179 N.C. 735, 102 S.E. 711 (1920).

Legislation Justified. — The legislature has no unlimited and arbitrary power over minors in respect to detaining them in reformatories, and enactments relating thereto are justified only upon the idea that the child is without parental care, and that his environments are such that he may reach manhood without restraint or training under corrupting influences, unless the State, as parens patriae, performs the duty which devolves primarily upon the parent. In re Watson, 157 N.C. 340, 72 S.E. 1049 (1911).

The juvenile court has no power to place a child anywhere for adoption, and when it ordered a child committed to an asylum upon its finding that the child was a neglected child, the further provision of the order that the asylum should have power to place the child in a home for adoption is void. Ward v. Howard, 217 N.C. 201, 7 S.E.2d 625 (1940).

Trial by Jury.—The constitutional right of trial by jury does not extend to an investigation into the status and needs of a child upon the question as to whether he should be sent to a reformatory for his own good as well as the good of the community in the interest of good citizenship, nor does the restraint therein put upon the child amount to a deprivation of his liberty without due process of law, nor is it a punishment for crime. In re Watson, 157 N.C. 340, 72 S.E. 1049 (1911).

Habeas Corpus.—When a child is placed and detained in a reformatory under order of court, without notice to the parent or giving him an opportunity to be heard, the parent may have the legality of the detention inquired into upon his petition for a writ of habeas corpus. In re Watson, 157 N.C. 340, 72 S.E. 1049 (1911).

Applied in Winner v. Brice, 212 N.C. 294, 193 S.E. 400 (1937).

§ 110-30. Child to be kept apart from adult criminals; detention homes.—No child coming within the provisions of this article shall be placed in any penal institution, jail, lockup, or other place where such child can come in contact at any time or in any manner with any adult convicted of crime and committed or under arrest and charged with crime. Provisions shall be made for the temporary detention of such children in a detention home to be conducted as an agency of the court for the purposes of this article, or the judge may arrange for the boarding of such children temporarily in a private home or homes in the custody of some fit person or persons subject to the supervision of the court, or the judge may arrange with any incorporated institution, society or association maintaining a suitable place of detention for children for the use thereof as a temporary detention home.

In case a detention home is established as an agency of the court it shall be furnished and carried on as far as possible as a family home in charge of a superintendent or matron who shall reside therein. The judge of the juvenile court may, with the approval of the State Board of Public Welfare, appoint a matron or superintendent or both and other necessary employees for such home in the same manner as probation officers are appointed under this article, their salaries to be fixed and paid in the same manner as the salaries of probation officers. The necessary expense incurred in maintaining such detention home shall be a public charge.

In case the judge shall arrange for the boarding of children temporarily detained in private homes, a reasonable sum for the board of such children while temporarily detained in such homes shall be paid by the county in which such child shall reside or may be found.

In case the judge shall arrange with any incorporated institution, society or association, for the use of a detention home maintained by such institution, society or association, he shall enter an order which shall be effectual for that purpose and a reasonable sum shall be appropriated by the county commissioners for the compensation of such institution, society or association for the care of children residing or found within the county who may be detained therein. (1919, c. 97, s. 10; C. S., s. 5048; 1957, c. 100, s. 1.)

§ 110-31. Probation officers; appointment and discharge; compensation. — The judge of the juvenile court in each county shall appoint one or more suitable persons as probation officers who shall serve under his direction. The appointment of such probation officers shall be approved by the State Board of Public Welfare.

The county director of public welfare shall be the chief probation officer of every juvenile court in his county and shall have supervision over the work of any additional probation officer which may be appointed. Provided, that in those counties which have a domestic relations court or a juvenile court with its own probation staff separate from the county department of public welfare, the chief probation officer duly appointed by the judge of such domestic relations court or juvenile court shall be the chief probation officer rather than the county director of public welfare and shall have supervision of all probation services authorized under this article.

The judge appointing any probation officer may discharge such officer for cause after serving such officer with a written notice, but no probation officer shall be discharged without the approval of the State Board of Public Welfare.

The judge appointing any probation officer may in his discretion determine that a suitable salary be paid and may, with the approval of the judge of the superior court, fix the amount thereof. Such salary so determined and so approved shall be paid by the board of county commissioners; but no person shall be paid a salary as probation officer without a certificate of qualification from the State Board of Public Welfare.

The State Board of Public Welfare shall establish rules and regulations pursuant to which appointments under this article shall be made, to the end that such appointments shall be based upon merit only.

The appointment of a probation officer shall be in writing and one copy of the order of appointment shall be delivered to the officer so appointed and another filed in the office of the State Board of Public Welfare. (1919, c. 97, s. 11; C. S., s. 5049; 1957, c. 100, s. 1; 1961, c. 186; 1963, c. 633.)

Editor's Note. — The 1963 amendment added the proviso to the second paragraph.

§ **110-31.1. Probation officers as members of county welfare staffs.** —(a) By written agreement between the judge of the juvenile court and the county director of public welfare, all probation officers of the juvenile court may be regular employees of the county department of public welfare, attached to the staff of the department and responsible directly to the county director of public welfare as chief probation officer of the county. Upon the election or appointment of a judge of the juvenile court who is not a party to any agreement heretofore entered into under this section, a new agreement may be entered into as provided herein.

(b) When such agreement shall have been entered into, probation officers shall be employed and compensated in the same manner as all other employees of the county department of public welfare are employed and compensated. (1947, c. 94; 1961, c. 186.)

§ **110-32. Probation; conditions; revocation.**—When the court places any child or adult on probation as provided in this article it shall determine the conditions of probation, which may be modified by the court at any time. A child shall remain on probation for such period as the court shall determine during the minority of such child. An adult shall remain on probation for such period as the court shall determine, not to exceed five years. The conditions of probation shall be such as the court shall prescribe, and may include among other conditions any or several of the following: That the probationer shall indulge in no unlawful or injurious habits; shall avoid places or persons of disreputable or harmful character; shall report to the probation officer as directed by the court or probation officers; shall permit the probation officer to visit him in a reasonable manner at his place of abode or elsewhere; shall answer any reasonable inquiries on the part of the probation officer concerning his conduct or condition; shall, if a child of compulsory school age, attend school regularly; shall, if an adult or a child who does not attend school, work faithfully at suitable employment; shall remain or reside within a specified place or locality; shall pay a fine in one or several sums; shall make restitution or reparation to the aggrieved parties for actual damages or losses caused by an offense upon such conditions as the court shall determine; and shall make payment for the support of any lawful dependents as required by the court.

Any person on probation may at any time be required to appear before the court, and in case of his failure to do so when properly notified by the probation officer, the court may issue a warrant for his arrest. In the case of a child on probation, if the court believes that the welfare of such child will thereby be promoted, the probation may be revoked at any time and the court may make such other disposition of the child as it might have made at the time the child was placed on probation. An adult on probation who violates any of the conditions thereof may be arrested upon a warrant issued by the court and the court may impose any penalties which it might have imposed at the time the defendant was placed on probation. (1919, c. 97, s. 12; C. S., s. 5050.)

§ **110-33. Duties and powers of probation officers.** — It shall be the duty of a probation officer to make such investigations before, during or after the trial or hearing of any case coming before the court as the court shall direct, and to report thereon in writing. The probation officer shall take charge of any child before or after the trial or hearing when so directed by the court. The probation officer shall furnish to each person released on probation under his supervision a written statement of the conditions of probation and shall instruct the probationer and other persons responsible for the welfare of the probationer regarding same, and shall enforce all the conditions of probation. Such officer shall keep informed concerning the conduct and condition of each person on probation under his supervision by visiting, requiring of reports, and in other ways, and shall report upon the progress of each case under his supervision at least monthly to the court. Such officer shall use all suitable methods not inconsistent with the conditions imposed by the court to aid and encourage persons on probation and to bring about improvement in their conduct and condition. Such officer shall keep detailed records of his work. He shall keep accurate and complete accounts of all moneys collected from persons under his supervision; he shall give receipts therefor and shall make at least monthly returns thereof; such officer shall make such report to the State Board of Public Welfare as it may from time to time require, and shall perform such other duties as the court under whose direction such officer is serving shall direct. Every probation officer shall have all the powers of a peace officer within the jurisdiction of the court which he serves. With the approval or under the direction of the judge of the court in which a probation officer is serving, such officer is authorized and empowered to act as probation officer over any person on probation transferred to his supervision from any other court and may act as parole officer over any person released from a correctional institution when requested to do so by the authorities thereof and when authorized so to act by the judge of the court in which such probation officer is serving. (1919, c. 97, s. 13; C. S., s. 5051; 1957, c. 100, s. 1.)

§ **110-34. Support of child committed to custodial agency.**—Whenever any child is committed by the court to the custody of an institution, association, society or person other than its parent or guardian, compensation for the care of such child, when approved by the order of the court, shall be a charge upon the county, but the court may at the issuance and service of an order to show cause on the parent or other person having the duty under the law to support such child adjudge that such parent or other person shall pay in such manner as the court may direct such sum as will cover in whole or in part the support of such child, and willful failure to pay such sum may be punished as a contempt of court. (1919, c. 97, s. 14; C. S., s. 5052.)

§ **110-35. Selection of custodial agency.**—In committing any child to any institution or other custodial agency other than one supported and controlled by the State or in placing the child under any guardianship other than that of its natural guardians, the court shall as far as practicable select as the custodial agency an institution, society or association governed by persons of like religious faith as the parents of such child or an individual holding the same religious belief. (1919, c. 97, s. 15; C. S., s. 5053.)

§ **110-36. Modification of judgment; determination whether child abandoned; return of child to parents.**—Any order or judgment made by the court in the case of any child shall be subject to such modification from time to time as the court may consider to be for the welfare of such child, except that a child committed to an institution supported and controlled by the State may be released or discharged only by the governing board or officer of such institution.

Upon petition by any interested person, the court shall have power to determine whether any such child is an abandoned child, within the meaning and under the provisions of chapter 48 of the General Statutes.

Any parent or guardian, or, if there be no parent or guardian, the next friend of any child who has been or shall hereafter be committed by the court to the custody of an institution other than an institution supported and controlled by the State, or to the custody of any association, society or person, may at any time file with the court a petition verified by affidavit setting forth under what conditions such child is living, and that application for the release of the child has been made to and denied by such institution, association, society or person, or that the said institution, association, society or person has failed to act upon such application within a reasonable time. A copy of such petition shall at once be served by the court upon such institution, association, society or person, whose duty it shall be to file a reply to the same within five days. If, upon examination of the petition and reply, the court is of the opinion that an investigation should be had, it may, upon due notice to all concerned, proceed to hear the facts and determine the question at issue, and may return such child to the custody of its parents or guardian or direct such institution, association, society or person to make such other arrangements for the child's care and welfare as the circumstances of the case may require.

Any child while under the jurisdiction of the court shall be subject to the visitation of the probation officer or other agent of the court authorized to visit such child. (1919, c. 97, s. 16; C. S., s. 5054; 1957, c. 778, s. 9.)

Cross Reference. — As to appeals, see § 110-40.

Rights of Parents. — Parents, guardian, etc., must be notified and given an opportunity to be heard in proceedings in the juvenile courts under this section, with the right to review in the superior court upon adverse judgment; and if the child is taken over by the State, they are allowed, on proper application at any time, to have their child brought before the court, its condition inquired into, and further orders made concerning it, except where committed to a State institution and then they may apply directly to the superior court, thus giving full consideration to the family relation and parental rights. State v. Burnett, 179 N.C. 735, 102 S.E. 711 (1920).

The exception in this section, that a case may not be investigated on the petition of the parent, etc., when the child is committed to the custody of an institution controlled by the State, applies to the action of the juvenile court, and does not limit the superior court in its general jurisdiction over matters of law and equity in making, upon proper application and appropriate writs, inquiry and investigation into the status and condition of children disposed of under the statute, or in rendering such orders and decrees therein as the rights and justice of the case or the welfare of the child may require. State v. Burnett, 179 N.C. 735, 102 S.E. 711 (1920).

Court May Modify Decree in Absence of Parent or Child. — Under this section the court may alter or modify its decree as to the custody of the children, even in the absence of the parent or the child from its territorial jurisdiction. In re Blalock, 233 N.C. 493, 64 S.E.2d 848, 25 A.L.R.2d 818 (1951).

Dismissal of appeal from denial of motion by parents for modification of an order committing the custody of their minor children to the State Board of Public Welfare does not preclude the parents from later moving for modification of the judgment on the ground of changed conditions. In re De Febio, 237 N.C. 269, 74 S.E.2d 531 (1953).

§ 110-37. Guardian appointed if welfare of child promoted.—Whenever in the course of a proceeding instituted under this article it shall appear to the court that the welfare of any child within the jurisdiction of the court will be promoted by the appointment of an individual as general guardian of its person, when such child is not committed to an institution or to an incorporated society or association, or by the appointment of an individual or corporation as general guardian of its property, the court shall have jurisdiction to make such appointment, either upon the application of the child or of some relative or friend, or upon the court's own motion, and in that event an order to show cause may be made by the court to be served upon the parent or parents of such child in such manner and for such time, prior to the hearing, as the court may deem reasonable. In any case arising under this article the court may determine as between parents or others whether the father or mother or what person shall have the custody and direction of said child, subject to the provisions of the preceding section [§ 110-36]. (1919, c. 97, s. 17; C. S., s. 5055.)

§ **110-38. Medical examination and treatment of child; application for admission to center for mentally retarded.**—The court, in its discretion, either before or after a hearing, may cause any child within its jurisdiction to be examined by one or more duly licensed physicians, who shall submit a written report thereon to the court. If it shall appear to the court that any child within the jurisdiction of the court is mentally retarded, the court may appoint a responsible person to make an application for the admission of such child to the appropriate center for the care and treatment of the mentally retarded, in accordance with the provisions of G.S. 122-70. No child shall be committed to such institution unless the parent or parents or the guardian or custodian of such child, if such there be, are given an opportunity for a hearing.

Whenever a child within the jurisdiction of the court and under the provisions of this article appears to the court to be in need of medical or surgical care a suitable order may be made for the treatment of such child in a hospital or otherwise, and the expense thereof, when approved by the court, shall be a charge upon the county or the appropriate subdivision thereof; but the court may adjudge that the person or persons having the duty under the law to support such child shall pay a part or all of the expenses of such treatment as provided in § 110-34 of this article. (1919, c. 97, s. 18; C. S., s. 5056; 1963, c. 1184, s. 34.)

Editor's Note. — The 1963 amendment rewrote the second sentence of the first paragraph.

§ **110-39. Neglect by parents; encouraging delinquency by others; penalty.**—(a) A parent, guardian, or other person having custody of a child, who omits to exercise reasonable diligence in the care, protection, or control of such child or who knowingly or wilfully permits such child to associate with vicious, immoral, or criminal persons, or to beg or solicit alms, or to be an habitual truant from school, or to enter any house of prostitution or assignation, or any place where gambling is carried on, or to enter any place which may be injurious to the morals, health, or general welfare of such child, and any such person or any other person who knowingly or wilfully is responsible for, or who encourages, aids, causes, or connives at, or who knowingly or wilfully does any act to produce, promote, or contribute to, any condition of delinquency or neglect of such child shall be guilty of a misdemeanor.

(b) It shall not be necessary that there shall have been a prior adjudication of delinquency or neglect of the childs in order to proceed under this statute.

(c) A prior adjudication of delinquency or neglect shall not preclude a subsequent proceeding against any parent, guardian or other person who thereafter contributes to any condition of delinquency or neglect. (1919, c. 97, s. 19; C. S., s. 5057; 1959, c. 1284.)

§ **110-40. Appeals.**—An appeal may be taken from any judgment or order of the juvenile court to the superior court having jurisdiction in the county by the parent or, in case there is no parent, by the guardian, custodian or next friend of any child, or by any adult described in §§ 110-38 and 110-39 of this article on behalf of any child whose case has been heard by the juvenile court. Written notice of such appeal shall be filed with the juvenile court within five days after the issuance of the judgment or order of such court.

On receipt of notice of such appeal the judge of the juvenile court shall, within five days thereafter, prepare, sign, and file with the record of the case a statement of the case on appeal, together with his decision, and notice of the appeal, and exhibit such statement to the parties or their attorneys upon request. If either party excepts or objects to the statement as partial, inadequate, or erroneous he must put his exceptions or objections in writing, and file the original and two copies thereof with the judge of the juvenile court within ten days of the filing by the judge of a statement of case on appeal. The judge of the juvenile court shall forthwith transmit his statement of the case on appeal and any exceptions or objections thereto to the resident judge of the district or to the judge holding the courts of the district.

The judge of the superior court shall on receiving a statement or record of appeal from the juvenile court hear and determine the questions of law or legal inference and the judge shall deliver to the clerk of the superior court of the county in which the action or proceeding is pending his order or judgment. The clerk of the superior court shall immediately notify the judge of the juvenile court of the order or judgment.

Where the appeal is to the superior court upon issues of fact, either party may demand that the same be tried at the first term of said court after the appeal is docketed in said court, and said trial shall have precedence over all other cases except the cases of exceptions to homesteads and the cases of summary ejectment: Provided, that said appeal shall have been docketed prior to the convening of the said court: Provided further, that the presiding judge may take up for trial in advance any pending case in which the rights of the parties or the public require it. (1919, c. 97, s. 20; C. S., s. 5058; 1949, c. 976.)

Editor's Note. — For comment on the 1949 amendment, see 27 N.C.L. Rev. 443.

Authority of Superior Court Judge.—Where the proceedings for the custody of a child under sixteen years of age had been transferred to the juvenile court, and comes again to the superior court judge on appeal, the judge of the latter court has authority to review the findings of fact and the judgment of the former court, under the supervision and control given him by this section, and his findings upon competent evidence are conclusive on appeal to the Supreme Court. In re Hamilton, 182 N.C. 44, 108 S.E. 385 (1921).

Where the superior court judge has referred a proceeding brought by a husband in that court for the custody of his child, less than sixteen years of age, and the matter comes on appeal to the superior court again, the validity of the order sending or transferring the petition to the juvenile court for original investigation does not present a controlling question, or affect the jurisdiction of the superior court on the appeal, for thereon the judge thereof has ample authority to hear the case, either because it was properly instituted in the first instance or by virtue of the appeal. In re Hamilton, 182 N.C. 44, 108 S.E. 385 (1921).

Application for Possession of Child First Made to Juvenile Court.—Where the parent of a child that has been adjudicated a ward of the State afterwards claims the possession of the child, the procedure requires that she make application to the juvenile court that had adjudicated the matter in order to avoid conflict and uncertainty as to status or condition of the child, to the end that an investigation be made of the circumstances in the course and practice of the courts. In re Coston, 187 N.C. 509, 122 S.E. 183 (1924).

Effect of Juvenile Court's Adjudication.—Where the juvenile court has by proper proceeding acquired jurisdiction of the parties and of the subject matter of children whose custody is subject to controversy, its adjudication for the welfare of the children must be held effective and binding on the parties, subject to review on appeal. In re Prevatt, 223 N.C. 833, 28 S.E.2d 564 (1944).

Writ of Habeas Corpus.—The statutory remedy by appeal being provided from the determination of the juvenile court from its judgment that a certain child comes within the statutory provisions, and the status of the child has been ascertained by the juvenile court as being that of a ward of the State, the writ of habeas corpus is not available to the parent or other person claiming the child, unless in rare and exceptional cases wherein the welfare of the child has not been properly provided for. In re Coston, 187 N.C. 509, 122 S.E. 183 (1924).

While prima facie the parent has the right to the custody of his child in preference to others, this right is not an absolute one and must yield when the best interest of the child requires it; and when the father has filed his petition in habeas corpus proceedings for the custody of his child in the possession of his deceased wife's parents, the award of the superior court judge for the respondents upon findings, sustained by the evidence, that the father was an unsuitable person, and that the best interest of the child required that she should remain with her grandparents, will not be disturbed in the Supreme Court on appeal. In re Hamilton, 182 N.C. 44, 108 S.E. 385 (1921).

Stated in In re Custody of Simpson, 262 N.C. 206, 136 S.E.2d 647 (1964).

§ **110-41. Compensation of judge.**—The judge of the juvenile court shall be paid a reasonable compensation for his services, the amount to be determined by the county commissioners, and the amount thus determined by the county commissioners shall be charged against the public funds of the county. And such compensation shall be independent of any compensation which may come to him as clerk of the superior court. (1919, c. 97, s. 21; C. S., s. 5059.)

Cross Reference. — As to salaries of judges of city and joint city and county juvenile courts, see §§ 110-22 and 110-44.

§ **110-42. Public officers and institutions to aid.**—It is hereby made the duty of every State, county or municipal official or department to render such assistance and cooperation within his or its jurisdiction or power as shall further the objects of this article. All institutions or other agencies to which any person coming within the provision of this article may be sent are hereby required to give such information concerning such child to the court or to any other officer appointed by it as said court or official may require for the purposes of this article. The court is authorized to seek the cooperation of all societies, organizations or individuals to the end that the court may be assisted in every way in the discharge of its duties. (1919, c. 97, s. 22; C. S., s. 5060.)

§ **110-43. Rules of procedure devised by court.**—The court shall have power to devise and publish rules to regulate the procedure in cases coming within the provisions of this article and for the conduct of all probation and other officers of the court in such cases. The court shall devise and cause to be printed for public use such forms for records and for various petitions, orders, processes, and other papers in the cases coming within this article as shall meet the requirements thereof, and all expenses incurred in complying with the provisions of this article shall be a public charge. (1919, c. 97, s. 23; C. S., § 5061.)

§ **110-44. City juvenile courts and probation officers.**—Every city in North Carolina where the population was, by the last federal census report, ten thousand or more may maintain a juvenile court, to which is hereby given the powers, duties and obligations of this article to be exercised within their territorial boundaries. Such city juvenile courts shall conduct their business in accordance with the procedure set forth in this article as applying to the county juvenile court. It is hereby made the duty of governing bodies of such cities to make provisions for such courts and bear the expense thereof, either by requiring the recorder to act as a juvenile judge or by the appointment of a separate judge. The governing bodies of such cities shall also appoint one or more assistant probation officers who shall serve within its jurisdiction under the general supervision of the chief probation officer of the county, which chief probation officer of the county is hereby made the chief probation officer of the city court herein provided for. The salary of the juvenile court judge shall be fixed and paid by the governing body of the city, and such governing bodies are hereby given authority to expend such sums from the public funds of the city as may be required to carry this article into effect.

In case it may appear to the governing bodies of such cities herein described that is would be best to allow the county juvenile court to transact the business of the city, they may make such provisions and agreements with the county commissioners for the expense of the joint court as may be agreed upon, and in such event such a city is hereby permitted to make such arrangement in lieu of establishing a city juvenile court. But in case the county commissioners will not agree to such arrangement, then the city may establish a juvenile court, as provided in this section. Provided, that in the event the governing bodies of such cities reach an agreement with the county commissioners, whereby the county juvenile court shall also transact the business of the city juvenile court, the governing bodies of such city and county, by joint resolution, may elect a judge and an assistant judge of the combined court, who may be persons other than the clerk of the superior court, and who shall hold such office for the term of one year, and until their successors shall be duly elected. Such judge and assistant judge, when so elected, shall perform all the duties and possess all the powers and jurisdiction conferred by this article upon the clerk of the superior court, as well as that conferred upon the judge of the juvenile court of such cities by this article. The assistant judge provided for by this section shall only perform the functions of judge of the combined juvenile court when the regular judge is unavoidably absent, or sick, and no orders shall be entered by him except in such cases. The compensation of the judge and of the assistant judge provided for by this section shall be determined by the county commissioners and paid by such county. The part of said salary that shall be paid by such city shall be determined by agreement between the governing bodies of the two units, as hereinbefore provided for. The authority is also hereby given by this section for the election of an assistant judge of the juvenile court in cases where counties elect to combine with a city juvenile court and let such court transact the joint business of both county and city.

Any town of five thousand population which is not a county seat, and in which there is a recorder's court, may, if deemed advisable and necessary by the governing body, provide for the conduct of a juvenile court within the territorial jurisdiction of such recorder's court: Provided, that the provisions and procedure of this article are fully followed as in case for towns of ten thousand inhabitants. (1919, c. 97, s. 24; C. S., s. 5062; 1923, c. 193; 1943, c. 594; 1945, c. 186, s. 1.)

Local Modification. — Durham: 1945, c. 503; City of Greensboro: 1949, c. 669.

Editor's Note. — For comment on the 1943 amendment, see 21 N.C.L. Rev. 344. For comment on the 1945 amendment, see 23 N.C.L. Rev. 340.

Article 3.

Control over Child-Caring Facilities.

§ **110-45. Institution has authority of parent or guardian.**—Every indigent child which may be placed in any orphanage, children's home, or child-placing institution in this State, which shall be an institution existing under and by virtue of the laws of this State, shall be under the control of the authorities of such institution so long as, under the rules and regulations of such institution, the child is entitled to remain in the same. The authority of the institution shall be the same as that of a parent or guardian before the child was placed in the institution; but such authority shall extend only to the person of the child. (1917, c. 133, s. 1; C. S., s. 5063.)

§ **110-46. Regulations of institution not abrogated.**—Nothing in this article shall be construed in any way to abrogate any of the rules and regulations of such institutions insofar as the rules and regulations have for their purpose the welfare and protection of the institutions. (1917, c. 133, s. 2; C. S., s. 5064.)

§ **110-47. Enticing a child from institution.**—It is unlawful for any person to entice or attempt to entice, persuade, harbor, or conceal, or in any manner induce any indigent child to leave any of the institutions hereinbefore mentioned without the knowledge or consent of the authorities of such institutions. But this article shall not interfere with a mother's right to her child in case she becomes able to sustain her child; and the county commissioners in the county in which she resides shall in case of doubt have authority to recommend to the institution concerning the child. (1917, c. 133, s. 3; C. S., s. 5065.)

§ **110-48. Violation a misdemeanor.**—Any person violating any of the provisions of §§ 110-45, 110-46 and 110-47 shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1917, c. 133, s. 4; C. S., s. 5066.)

§ **110-49. Permits and licenses must be had by institutions caring for children.** — No individual, agency, voluntary association, or corporation seeking to establish and carry on any kind of business or organization in this State for the purpose of caring for and placing dependent, neglected, abandoned, destitute, orphaned or delinquent children, or children separated temporarily from their parents, shall be permitted to organize and carry on such work without first having secured a written permit from the State Board of Public Welfare. The said Board shall issue such permit recommending such business or organization only after it has made due investigation of the purpose, character, nature, methods and assets of the proposed business or organization.

Upon establishment as provided above, every such organization, except those exempted in § 108-3, subdivision (5) shall annually procure a license from the State Board of Public Welfare, and it shall be unlawful to carry on said work or business without having such license.

Any individual, corporation, institution, or association violating any of the provision of this section shall, upon conviction thereof, be guilty of a misdemeanor and punished by a fine of not more than two hundred dollars or by imprisonment of not more than six months, or by both such fine and imprisonment. (1919, c. 46; C. S., s. 5067; 1931, c. 226, s. 6; 1957, c. 100, s. 1.)

ARTICLE 4.

Placing or Adoption of Juvenile Delinquents or Dependents.

§ **110-50. Consent required for bringing child into State for placement or adoption.**—(a) No person, agency, association, institution, or corporation shall bring or send into the State any child for the purpose of giving his custody to some person in the State or procuring his adoption by some person in the State without first obtaining the written consent of the State Board of Public Welfare.

(b) The person with whom a child is placed for either of the purposes set out in subsection (a) of this section shall be responsible for his proper care and training. The Board or its agents shall have the same right of visitation and supervision of the child and the home in which it is placed as in the case of a child placed by the Board or its agents as long as the child shall remain within the State and until he shall have reached the age of eighteen years or shall have been legally adopted. (1931, c. 226, s. 1; 1947, c. 609, s. 1.)

§ **110-51. Bond required.**—The State Board of Public Welfare may, in its discretion, require of a person, agency, association, institution, or corporation which brings or sends a child into the State with the written consent of the Board, as provided by § 110-50, a continuing bond in a penal sum not in excess of one thousand dollars ($1,000.00) with such conditions as may be prescribed and such sureties as may be approved by the State Board of Public Welfare. Said bond shall be made in favor of and filed with the State Board of Public Welfare with the premium prepaid by the said person, agency, association, institution or corporation desiring to place such child in the State. (1931, c. 226, s. 2; 1947, c. 609, s. 2.)

§ **110-52. Consent required for removing child from State.**—No child shall be taken or sent out of the State for the purpose of placing him in a foster home or in a child-caring institution without first obtaining the written consent of the State Board of Public Welfare. The foster home or child-caring institution in which the child is placed shall report to the Board at such times as the Board may direct as to the location and well-being of such child until he shall have reached the age of eighteen years or shall have been legally adopted. (1931, c. 226, s. 3; 1947, c. 609, s. 3.)

Applied in In re Blalock, 233 N.C. 493, 64 S.E.2d 848, 25 A.L.R.2d 818 (1951).

§ **110-53**: Repealed by Session Laws 1947, c. 609, s. 4.

§ **110-54**: Repealed by Session Laws 1943, c. 753, s. 2.

§ **110-55. Violation of article a misdemeanor.**—Every person acting for himself or for an agency who violates any of the provisions of this article or who shall intentionally make any false statements to the State Board of Public Welfare shall, upon conviction thereof, be guilty of a misdemeanor and punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months, or by both such fine and imprisonment. (1931, c. 226, s. 7; 1957, c. 100, s. 1.)

Quoted in part in In re Blalock, 233 N.C. 493, 64 S.E.2d 848, 25 A.L.R.2d 818 (1951).

§ **110-56. Definitions.**—The term "Board" wherever used in this article shall be construed to mean the State Board of Public Welfare. The terms "he" and "his" and "him" wherever used in this article shall apply to a female as well as a male child. (1931, c. 226, s. 8; 1957, c. 100 s. 1.)

Stated in In re Blalock, 233 N.C. 493, 64 S.E.2d 848, 25 A.L.R.2d 818 (1951).

§ **110-57. Application of article.**—None of the provisions of this article shall apply when a child is brought into or sent into, or taken out of, or sent out of the State, by the guardian of the person of such child, or by a parent, stepparent, grandparent, uncle or aunt of such child, or by a brother, sister, half-brother, or half-sister of such child, if such brother, sister, half-brother, or half-sister is twenty-one years of age or older. (1947, c. 609, s. 5.)

Article 5.

Interstate Compact on Juveniles.

§ **110-58. Execution of compact.**—The Governor is hereby authorized and directed to execute a compact on behalf of this State with any other state or states legally joining therein in the form substantially as follows: The contracting states solemnly agree:

Article I. Findings and Purposes.

That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to

(1) Cooperative supervision of delinquent juveniles on probation or parole;
(2) The return, from one state to another, of delinquent juveniles who have escaped or absconded;
(3) The return, from one state to another, of nondelinquent juveniles who have run away from home; and
(4) Additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively.

In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

ARTICLE II. EXISTING RIGHTS AND REMEDIES.

That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

ARTICLE III. DEFINITIONS.

That, for the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected or dependent children; "state" means any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

ARTICLE IV. RETURN OF RUNAWAYS.

(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer to whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding ninety (90) days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

(c) That "juvenile" as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

ARTICLE V. RETURN OF ESCAPEES AND ABSCONDERS.

(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding ninety (90) days, as will enable his detention under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) That the state to which a delinquent juvenile is returned under this Article shall be responsible for the payment of the transportation costs of such return.

ARTICLE VI. VOLUNTARY RETURN PROCEDURE.

That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV(a) or Article V (a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

ARTICLE VII. COOPERATIVE SUPERVISION OF PROBATIONERS AND PAROLEES.

(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(d) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

ARTICLE VIII. RESPONSIBILITY FOR COSTS.

(a) That the provisions of Articles IV(b), V(b) and VII(d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(b), V(b), or VII(d) of this compact.

ARTICLE IX. DETENTION PRACTICES.

That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

ARTICLE X. SUPPLEMENTARY AGREEMENTS.

That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided, in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall

(1) Provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished:

(2) Provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody;

(3) Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

(4) Provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

(5) Provide for reasonable inspection of such institutions by the sending state;

(6) Provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and

(7) Make provisions for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

ARTICLE XI. ACCEPTANCE OF FEDERAL AND OTHER AID.

That any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize, the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

Article XII. Compact Administrators.

That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

Article XIII. Execution of Compact.

That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form or [of] execution to be in accordance with the laws of the executing state.

Article XIV. Renunciation.

That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present Article.

Article XV. Severability.

That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. (1963, c. 910, s. 1; 1965, c. 925, s. 1.)

Editor's Note. — The 1965 amendment substituted "may hold a hearing" for "shall hold a hearing" near the beginning of the fifth sentence of the first paragraph of subsection (a) of Art. IV, inserted "either with or without a hearing" near the beginning of the sixth sentence of that paragraph, substituted "may" for "shall upon request" in the last sentence of the same paragraph, substituted "ninety (90)" for "thirty (30)" near the end of the first sentence of the second paragraph of subsection (a) of Art. IV, and rewrote subsection (c) of that article.

§ **110-59. Compact administrator.**—Pursuant to said compact, the Governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effecively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the Governor. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this State and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this State hereunder. (1963, c. 910, s. 2.)

§ **110-60. Supplementary agreements.**—The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this State or require or contemplate the provision of any service by this State, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. (1963, c. 910, s. 3.)

§ **110-61. Discharging financial obligations imposed by compact or agreement.**—The compact administrator, subject to the approval of the Director of the Budget, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this State by the compact or by any supplementary agreement entered into thereunder. (1963, c. 910, s. 4.)

§ **110-62. Enforcement of compact.**—The courts, departments, agencies and officers of this State and subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions. (1963, c. 910, s. 5.)

§ **110-63. Additional procedure for returning runaways not precluded.**—In addition to any procedure provided in Articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts, or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this State and the other respective party states for the return of any such runaway juvenile. (1963, c. 910, s. 6.)

§ **110-64. Proceedings for return of runaways under Article IV of compact; "juvenile" construed.**—The judge of any court in North Carolina to which an application is made for the return of a runaway under the provisions of Article IV of the Interstate Compact on Juveniles shall hold a hearing thereon to determine whether for the purposes of the compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. The judge of any court in North Carolina finding that a requisition for the return of a juvenile under the provisions of Article IV of the compact is in order shall upon request fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding. The period of time for holding a juvenile in custody under the provisions of Article IV of the compact for his own protection and welfare, subject to the order of a court of this State, to enable his return to another state party to the compact pursuant to a requisition for his return from a court of that state, not exceed thirty (30) days. In applying the provisions of Article IV of the compact to secure the return of a runaway from North Carolina, the courts of this State shall construe the word "juvenile" as used in this Article to mean any male 16 years of age or under and any female 18 years of age or under. (1965, c. 925, s. 2.)

Chapter 111.

Commission for the Blind.

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ARTICLE 1.

Organization and General Duties of Commission.

§ 111-1. Commission created; appointment by Governor; ex officio members.—There shall be established a State commission, to be known as the North Carolina State Commission for the Blind, consisting of three persons, to be appointed by the Governor within thirty days after March 5, 1935. The superintendent of the State School for the Blind and the State supervisor of vocational rehabilitation shall be ex officio members of this Commission. (1935, c. 53, s. 1.)

§ **111-2. Term of office.** — The full term of office of the members of this Commission, with the exception of the superintendent of the State School for the Blind and the State supervisor of vocational rehabilitation, shall be five years. The term of office of the said ex officio members shall be contemporaneous with their tenure of office as superintendent of the State School for the Blind and State supervisor of vocational rehabilitation, respectively. Of the first Commission appointed, one member shall be appointed for a term of five years, one for a term of three years, one for a term of one year. At the expiration of the term of any member of the Commission, his successor shall be appointed for a term of five years. (1935, c. 53, s. 2.)

§ **111-3. Additional members of Commission for Blind; meeting place.**—In addition to the members of the North Carolina State Commission for the Blind, as provided in § 111-1, there shall be three additional persons, to be appointed by the Governor within thirty days after March 20, 1937. The State Health Director, the Director of the North Carolina Employment Service, and the Commissioner of Public Welfare of North Carolina shall also be ex officio members of this Commission, and their term of office shall be contemporaneous with their tenure of office as State Health Director, Director of the North Carolina Employment Service, and Commissioner of Public Welfare. Of the three additional members, to be appointed by the Governor as herein provided, one shall be appointed for a term of five years, one for a term of three years, and one for a term of one year. At the expiration of the term of any member of the Commission, his successor shall be appointed for a term of five years. All meetings of the North Carolina State Commission for the Blind shall be held in the city of Raleigh or at some other location to be designated and fixed by the chairman of the Commission. (1937, c. 285; 1957, c. 1357, s. 20; 1965, c. 236.)

Editor's Note.—The 1965 amendment added "or at some other location to be designated and fixed by the chairman of the Commission" at the end of the section.

§ **111-4. Register of State's blind.**—It shall be the duty of this Commission to cause to be maintained a complete register of the blind in the State of North Carolina, which shall describe the condition, cause of blindness, capacity for education and industrial training of each, with such other facts as may seem to the Commission to be of value. (1935, c. 53, s. 3.)

§ **111-5. Information and aid bureaus.**—The Commission shall maintain or cause to be maintained one or more bureaus of information and industrial aid, the object of which shall be to aid the blind in finding employment and to teach them trades and occupations which may be followed in their own homes, and to assist them in whatever manner may seem advisable to the Commission in disposing of the products of their home industry. (1935, c. 53, s. 4.)

§ **111-6. Training schools and workshops; training outside State; sale of products; direct relief; matching of federal funds.**—The Commission may establish one or more training schools and workshops for employment of suitable blind persons and shall be empowered to equip and maintain the same, to pay to employees suitable wages, and to devise means for the sale and distribution of the products thereof, and may cooperate with shops already established. The Commission may also pay for lodging, tuition, support and all necessary expenses for blind persons during their training or instructions in any suitable occupation, whether it be in industrial, commercial, or professional or any other establishments, schools or institutions, or through private instruction wherever in the judgment of the Commission such instruction or training can be obtained, when in its judgment the training or instruction in question will contribute to the efficiency or self-support of such blind persons. When special educational opportunities cannot be had within the State, they may be arranged for, at the discretion of the Board, outside of the State. The Commission may also, whenever it thinks proper, aid individual blind persons or groups of blind persons to become self-supporting by furnishing material or equipment to them, and may also assist them in the sale and distribution of their products. Any portion of the funds appropriated to the North Carolina State Commission for the Blind under the provisions of this chapter providing for the rehabilitation of the blind and the prevention of blindness may, when the North Carolina State Commission for the Blind deems wise, be given in direct money payments to the needy blind in accordance with the provisions of §§ 111-13 to 111-26, and whenever possible such funds may be matched by funds provided by the federal Social Security Act. (1935, c. 53, s. 5; 1937, c. 124, s. 16.)

§ **111-6.1. Rehabilitation center for the adult blind.** — In addition to other powers and duties granted it by law, the North Carolina State Commission for the Blind is hereby authorized and directed to establish and operate a rehabilitation center for the blind for the purpose of assisting them in their mental, emotional, physical, and economic adjustments to blindness through the application of proper tests, measurements, and intensive training in order that they may develop manual dexterity, obstacle and direction awareness, acceptable work habits, and maximum skills in industrial and commercial processes.

The Commission shall make all rules and regulations necessary for this purpose and is hereby authorized to enter into any agreement or contract, to purchase or lease property both real and personal, to accept grants and gifts of whatsoever nature, and to do all other things necessary to carry out the intent and purpose of such a rehabilitation center.

The State Commissioner for the Blind is hereby authorized to receive grants in aid from the federal government for carrying out the provisions of this section, as well as for other related rehabilitation programs for the North Carolina blind, under the provisions of the act of Congress known as the Barden-Rehabilitation Act (volume fifty-seven, United States Statutes at Large, chapter one hundred and ninety). Blind persons, who have been residents of North Carolina for one year immediately preceding the date of application for rehabilitation services or who show an established intent to reside continuously in this State, may enjoy the benefits of this section, or any other related rehabilitation benefits under the said Barden-Rehabilitation Act. (1945, c. 698; 1951, c. 319, s. 4.)

§ **111-7. Promotion visits.** — The Commission may ameliorate the condition of the blind by promotion visits among them and teaching them in their homes as the Commission may deem advisable. (1935, c. 53, s. 6.)

§ **111-8. Investigations; eye examination and treatment.**—It shall be the duty of this Commission to continue to make inquiries concerning the cause of blindness, to learn what proportion of these cases are preventable and to inaugurate and cooperate in any such measure for the State of North Carolina as may seem wise. The Commission may arrange for the examination of the eyes of the individual blind and partially blind persons and may secure and pay for medical and surgical treatment for such persons whenever in the judgment of a qualified ophthalmologist the eyes of such person may be benefited thereby. (1935, c. 53, s. 7.)

§ **111-8.1. Certain eye examinations to be reported to Commission.** —Whenever, upon examination at a clinic, hospital, or other institution, or elsewhere by a physician, optometrist or other person examining eyes any person is found to have no vision or vision with glasses which is so defective as to prevent the performance of ordinary activities for which eyesight is essential, the physician, the superintendent of such institution or other person who conducted or was in charge of the examination shall within thirty days report the results of the examination to the North Carolina State Commission for the Blind. (1945, c. 72, s. 3.)

§ **111-9. Officers and agents; annual report.**—The Commission may appoint such officers and agents as may be necessary to carry out the provisions of this chapter and their compensation shall be fixed within the limits of the annual appropriation by the Director of Personnel, but no person employed by the Commission shall be a member thereof. The annual report shall present a concise review of the work of the Commission for the preceding year, with such suggestions and recommendations for improving the conditions of the blind and preventing blindness as may seem expedient. (1935, c. 53, s. 8.)

§ **111-10. Compensation and expenses of Commission.**—The members of the Commission shall receive no compensation for their services; but their traveling and other necessary expenses, incurred in the performance of their official duties, shall be audited by the State Auditor and paid by the Treasurer of the State, out of the moneys that may be appropriated therefor. (1935, c. 53, s. 9.)

§ **111-11. Qualifications of beneficiaries.**—The beneficiaries of the Commission shall be persons who are totally blind or whose vision with glasses is so defective as to prevent the performance of ordinary activity for which eyesight is essential. No person shall benefit from the provisions of this chapter unless he has been a resident of North Carolina for at least one year next preceding the receiving of such benefit. (1935, c. 53, s. 10; 1939, c. 124.)

§ **111-12. Work of State Board of Health unaffected.** — Nothing herein shall be construed to in any way abridge the rights and privileges of the State Board of Health in the treatment of the blind, or in accumulating and disseminating information in reference to the blind and in the prevention of blindness. (1935, c. 53, s. 11.)

§ **111-12.1. Acceptance of private contributions for particular facilities authorized.** — In addition to other powers and duties granted it by law, the North Carolina State Commission for the Blind is hereby authorized to accept contributions of funds made by any private individual, agency or organization even though a condition of the contribution may be that the funds be utilized for the establishment of a particular public or private nonprofit workshop, rehabilitation center or other facility established for the purpose of providing training or employment for eligible blind persons. (1965, c. 906, s. 1.)

§ **111-12.2. Contributions treated as State funds to match federal funds.**—The Commission is further authorized to treat any funds received in accordance with § 111-12.1 as State funds for the purpose of accepting any funds made available under federal law on a matching basis for the establishment of such facilities. (1965, c. 906, s. 2.)

§ **111-12.3. Rules and regulations as to receiving and expending contributions.**—The Commission shall make all rules and regulations necessary for the purpose of receiving and expending any funds mentioned in §§ 111-12.1 to 111-12.3 which are consistent with the principle of obtaining maximum federal participation and in accordance with established budget procedures of the North Carolina Department of Administration. (1965, c. 906, s. 3.)

Article 2.

Aid to the Needy Blind.

§ **111-13. Administration of assistance; objective standards for personnel; rules and regulations.**—The North Carolina State Commission for the Blind shall be charged with the supervision of the administration of assistance to the needy blind under this article, and said Commission shall establish objective standards for personnel to be qualified for employment in the administration of this article, and said Commission shall make all rules and regulations as may be necessary for carrying out the provisions of this article, which rules and regulations shall be binding on the boards of county commissioners and all agencies charged with the duties of administering this article. (1937, c. 124, s. 2.)

§ **111-14. Application for benefits under article; investigation and award by county commissioners.** — Any person claiming benefit under this article, shall file with the commissioners of the county in which he or she is residing an application in writing, in duplicate, upon forms prescribed by the North Carolina State Commission for the Blind, which application shall be accompanied by a certificate signed by a reputable physician licensed to practice medicine in the State of North Carolina and who is actively engaged in the treatment of diseases of the human eye, or by an optometrist, whichever the individual may select, to the effect that the applicant is blind or that his or her vision with glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential. Such application may be made on the behalf of any such blind person by the North Carolina State Commission for the Blind, or by any other person. The board of county commissioners shall cause an investigation to be made by a qualified person, or persons, designated as their agents for this purpose and shall pass upon the said application without delay, determine the eligibility of the applicant, and allow or disallow the relief sought. In passing upon the application, they may take into consideration the facts set forth in the said application, and any other facts that are deemed necessary, and may at any time, within their discretion, require an additional examination of the applicant's eyes by an ophthalmologist designated by the North Carolina State Commission for the Blind. When satisfied with the merits of the application, the board of county commissioners shall allow the same and grant to the applicant such relief as may be suitable and proper, according to the rules and standards established by the North Carolina State Commission for the Blind, not inconsistent with this article and in accordance with the further provisions hereof. (1937, c. 124, s. 3; 1939, c. 124; 1951, c. 319, s. 1; 1957, c. 674.)

Editor's Note.—For comment on the enactment of this article and its application, see 15 N.C.L. Rev. 369.

§ **111-15. Eligibility for relief.** — Blind persons having the following qualifications shall be eligible for relief under the provisions of this article:

(1) Whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential; and

(2) Who are unable to provide for themselves the necessities of life and who have insufficient means for their own support and who have no relative or relatives or other persons in this State able to provide for them who are legally responsible for their maintenance; and

(3) Who have been residents of the State of North Carolina one year immediately preceding the application; and

(4) Who are not inmates of any charitable or correctional institution of this State or of any county or city thereof: Provided, that an inmate of such charitable institution may be granted a benefit in order to enable such person to maintain himself or herself outside of an institution; and

(5) Who are not publicly soliciting alms in any part of the State, and who are not, because of physical or mental condition, in need of continuing institutional care. Provided, that the State agency shall, in determining need, take into consideration any other income and resources of

the individual claiming aid to the blind; except that, in making such determination, the State agency shall disregard such earned income as will enable said agency to receive the maximum grants from the federal government for such purpose. (1937, c. 124, s. 4; 1951, c. 319, s. 3; 1961, c. 666, s. 1.)

§ **111-16. Application transmitted to Commission; notice of award; review by Commission.**—Promptly after an application for aid is made to the board of county commissioners under this article the North Carolina State Commission for the Blind shall be notified thereof by mail, by said county commissioners, and one of the duplicate applications for aid made before the board of county commissioners shall be transmitted with said notice.

As soon as any award has been made by the board of county commissioners, or any application declined, prompt notice thereof in writing shall be forwarded by mail to the North Carolina State Commission for the Blind and to the applicant, in which shall be fully stated the particulars of the award or the facts of denial.

Within a reasonable time, in accordance with rules and regulations adopted by the North Carolina State Commission for the Blind, after action by the board of county commissioners, the applicant, if dissatisfied therewith, may appeal directly to the North Carolina State Commission for the Blind. Notice of such appeal must be given in writing to the board of county commissioners, and within thirty days after the receipt of such notice the board of county commissioners shall transmit to the North Carolina State Commission for the Blind copies of all proceedings and documents, including the award or denial, which may be necessary for the hearing of the said appeal, together with the grounds upon which the action was based.

As soon as may be practicable after the receipt of the said notice of appeal, the North Carolina State Commission for the Blind shall notify the applicant of the time and place where the hearing of such appeal will be had. The members of the North Carolina State Commission for the Blind shall hear the said appeal under such rules and regulations not inconsistent with this article as it may establish, and shall provide for granting an individual whose claim for aid is denied an opportunity for fair hearing before said Commission, and their decision shall be final. Any notice required to be given herein may be given by mail or by personally delivering in writing such notice to the clerk of the board of county commissioners or the executive secretary of the North Carolina State Commission for the Blind, except that notice of the time and place where the hearings of such appeals will be had shall be given by mail or by personal delivery of such notice in writing direct to the applicant.

In all cases, whether or not any appeal shall be taken by the applicant, the North Carolina State Commission for the Blind shall carefully examine such award or decision, as the case may be, and shall, in their discretion, approve, increase, allow or disallow any award so made. Immediately thereafter they shall notify the board of county commissioners and the applicant of such action, and if the award made by the board of county commissioners is changed, notice thereof shall be given by mail to the applicant and the board of county commissioners, giving the extent and manner in which any award has been changed.

If, in the absence of any appeal by the applicant, the North Carolina State Commission for the Blind shall make any order increasing or decreasing the award allowing or disallowing the same, the applicant or the board of county commissioners shall have the right, within ten days from notice thereof, to have such order reviewed by the members of the North Carolina State Commission for the Blind. The procedure in such cases shall be as provided in this section on appeals to the Commission by the applicant. (1937, c. 124, s. 5.)

§ **111-17. Amount and payment of assistance; source of funds.**— When the board of county commissioners is satisfied that the applicant is entitled to relief under the provisions of this article, as provided in § 111-14, they shall order necessary relief to be granted under the rules and regulations prescribed by the North Carolina State Commission for the Blind, to be paid from county, State and federal funds available, said relief to be paid in monthly payments from funds hereinafter mentioned.

At the time of fixing the annual budget for the fiscal year beginning July first, one thousand nine hundred thirty-seven and annually thereafter, the board of county commissioners in each county shall, based upon such information as they are able to secure and with such information as may be furnished to them by the North Carolina State Commission for the Blind, estimate the number of needy blind persons in such county who shall be entitled to aid under the provisions of this article and the total amount of such county's part thereof required to be paid by such county. All such counties shall make an appropriation in their budgets which shall be found to be ample to pay their part of such payments and, at the time of levying other taxes, shall levy sufficient taxes for the payment of the same. This provision shall be mandatory on all of the counties in the State. Such taxes so levied shall be and hereby are declared to be for this special purpose and levied with the consent of the General Assembly. Any court of competent jurisdiction is authorized by mandamus to enforce the foregoing provisions. No funds shall be allocated to any county by the North Carolina State Commission for the Blind until the provisions hereof have been fully complied with by such county.

In case such appropriation is exhausted within the year and is found to be insufficient to meet the county's part of the amount required for aid to the needy blind, such deficiency may be borrowed, if within constitutional limitations, at the lowest rate of interest obtainable, not exceeding six percent, and provision for payment thereof shall be made in the next annual budget and tax levy.

The board of county commissioners in the several counties of the State shall cause to be transmitted to the State Treasurer their share of the total amount of relief granted to the blind applicants. Such remittances shall be made by the several counties in equal monthly installments on the first day of each month, beginning July first, one thousand nine hundred thirty-seven. The State Treasurer shall deposit said funds and credit same to the account of the North Carolina State Commission for the Blind to be employed in carrying out the provisions of this article.

Within the limitations of the State appropriation, the maximum payment for aid to the blind is to be such as will make possible maximum matching funds by the federal government. (1937, c. 124, s. 6; 1961, c. 666, s. 3.)

Cited in Atlantic Coast Line Ry. v. Beaufort County, 224 N.C. 115, 29 S.E.2d 201 (1944).

§ **111-18. Payment of awards.** — After an award to a blind person has been made by the board of county commissioners, and approved by the North Carolina State Commission for the Blind the North Carolina State Commission for the Blind shall thereafter pay to such person to whom such award is made the amount of said award in monthly payments, or in such manner and under such terms as the North Carolina State Commission for the Blind shall determine. Such payment shall be made by warrant of the State Auditor, drawn upon such funds in the hands of the State Treasurer, at the instance and request and upon a proper voucher signed by the executive secretary of the North Carolina State Commission for the Blind, and shall not be subject to the provisions of the Executive Budget Act as to approval of said expenditure. (1937, c. 124, s. 7.)

§ **111-19. When applications for relief made directly to State Commission; transfer of residence.** — If any person, otherwise entitled to relief under this article, shall have the residence requirements in the State of North Carolina, but no legal settlement in any one of the counties therein, his or her application for relief under this article shall be made directly to the North Carolina State Commission for the Blind, in writing, in which shall be contained all the facts and information sufficient to enable the said Commission to pass upon the merits of the application. Blank forms for such application shall be furnished by the North Carolina State Commission for the Blind. If the said Commission finds the applicant entitled to assistance within the rules and regulations prescribed by it, and consonant with the provisions of this article, relief shall be given to such person coming under the rules of eligibility to such extent as the North Carolina State Commission for the Blind may consider just and proper, but not in excess of the amounts specified in § 111-17. Payment of the benefits thus awarded, however, shall be made entirely out of the funds provided by the State, together with such funds which may be added thereto as federal grants in aid, and shall not be a charge upon the funds locally raised by taxation in the counties until such person shall have resided in some county for sufficient time to acquire a settlement therein; thereafter payments shall be made as in other cases.

Any recipient of aid to the blind who moves to another county in this State shall be entitled to receive aid to the blind in the county to which he has moved, and the board of county commissioners, or its authorized agent, of the county from which he has moved shall transfer all necessary records relating to the recipient to the board of county commissioners, or its authorized agent, of the county to which he has moved. The county from which the recipient moves shall pay the aid to such recipient for a period of three months following such removal, and thereafter aid to such recipient shall be paid by the county to which such recipient has moved subject to the rules and regulations of the North Carolina State Commission for the Blind. (1937, c. 124, s. 8; 1947, c. 374; 1965, c. 905.)

Editor's Note. — The 1965 amendment deleted "not in excess of the amount paid before removal" following "such removal" in the last sentence of the second paragraph.

§ 111-20. Awards subject to reopening upon change in condition.— All awards to needy blind persons made under the provisions of this article shall be made subject to reopening and reconsideration at any time when there has been any change in the circumstances of any needy blind person or for any other reason. The North Carolina State Commission for the Blind and the board of county commissioners of each of the counties in which awards have been made shall at all times keep properly informed as to the circumstances and conditions of the persons to whom the awards are made, making reinvestigations biannually, or more often, as may be found necessary. The North Carolina State Commission for the Blind may at any time present to the proper board of county commissioners any case in which, in their opinion, the changed circumstances of the case should be reconsidered. The board of county commissioners shall reconsider such cases and any and all other cases which, in the opinion of the board of county commissioners, deserve reconsideration. In all such cases notice of the hearing thereon shall be given to the person to whom the award has been made. Any person to whom an award has been made may apply for a reopening and reconsideration thereof. Upon such hearing, the board of county commissioners may make a new award increasing or decreasing the former award or leaving the same unchanged, or discontinuing the same, as it may find the circumstances of the case to warrant, such changes always to be within the limitations provided by this article and in accordance with the terms hereof.

Any changes made in such award shall be reported to the North Carolina State Commission for the Blind, and shall be subject to the right of appeal and review, as provided in § 111-16. (1937, c. 124, s. 9.)

§ **111-21. Disqualifications for relief.** — No aid to needy blind persons shall be given under the provisions of this article to any individual for any period with respect to which he is receiving aid under the laws of North Carolina providing aid for dependent children and/or relief for the aged, and/or aid for the permanently and totally disabled. (1937, c. 124, s. 10; 1951, c. 319, s. 2.)

§ **111-22. Beneficiaries not deemed paupers.** — No blind person shall be deemed a pauper by reason of receiving relief under this article. (1937, c. 124, s. 11.)

§ **111-23. Misrepresentation or fraud in obtaining assistance.**—Any person who shall obtain, or attempt to obtain, by means of a willful, false statement, or representation, or impersonation, or other fraudulent devices, assistance to which he is not entitled shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred ($500.00) dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment. The superior court and the recorders' courts shall have concurrent jurisdiction in all prosecutions arising under this article. (1937, c. 124, s. 12.)

§ **111-24. Cooperation with federal Social Security Board; grants from federal government.**—The North Carolina State Commission for the Blind is hereby empowered and authorized and directed to cooperate with the federal Social Security Board, created under Title X of the Social Security Act, approved August fourteenth, one thousand nine hundred thirty-five, in any reasonable manner as may be necessary to qualify for federal aid for assistance to the needy blind and in conformity with the provisions of this article, including the making of such reports in such form and containing such information as the federal Social Security Board may from time to time require, and comply with such regulations as said Board may from time to time find necessary to assure the correctness and verification of such reports.

The North Carolina State Commission for the Blind is hereby further empowered and authorized to receive grants in aid from the United States government for assistance to the blind and grants made for payment of cost of administering the State plan for aid to the blind, and all such grants so received hereunder shall be paid into the State treasury and credited to the account of the North Carolina State Commission for the Blind in carrying out the provisions of the article. (1937, c. 124, s. 13.)

§ **111-25. Acceptance and use of federal aid.**—The Commission for the Blind may expend, under the provisions of the Executive Budget Act, such grants as shall be made for paying the cost of administering this chapter by the federal government under Title X of the Social Security Act. (1937, c. 124, s. 14.)

§ **111-26. Termination of federal aid.**—If for any reason there should be a termination of federal aid as anticipated in this article, then and in that event this article shall be ipso facto repealed and rendered null and void: Provided, however, such repeal shall not become effective or be in force unless and until the Governor of the State of North Carolina has issued a proclamation duly attested by the Secretary of the State of North Carolina to the effect that there has been a termination of such federal aid. In the event that this article should be ipso facto repealed as herein provided, the State funds on hand shall be converted into the general fund of the State for such use as may be authorized by the Director of the Budget, and the county funds accumulated by the provisions of this article in the respective counties of the State shall be converted into the general fund of such counties for such use as may be authorized by the county commissioners. (1937, c. 124, s. 15½.)

§ **111-27. Commission to promote employment of needy blind persons; vending stands on public property.**—For the purpose of assisting blind persons to become self-supporting, the North Carolina State Commission for the Blind is hereby authorized to carry on activities to promote the employment of needy blind persons, including the licensing and establishment of such persons as operators of vending stands in public buildings. The said Commission may cooperate with the federal government in the furtherance of the provisions of the act of Congress known as the Randolph-Sheppard Bill (H.R. 4688) providing for the licensing of blind persons to operate vending stands in federal buildings, or any other acts of Congress which may be hereafter enacted.

The board of county commissioners of each county and the commissions or officials in charge of various State and municipal buildings are hereby authorized and empowered to permit the operation of vending stands by needy blind persons on the premises of any State, county or municipal property under their respective jurisdictions: Provided, that such operators shall be first licensed by the North Carolina State Commission for the Blind: Provided further, that in the opinion of the commissions or officials having control and custody of such property, such vending stands may be properly and satisfactorily operated on such premises without undue interference with the use and needs thereof for public purposes. (1939, c. 123.)

§ **111-27.1. Commission authorized to conduct certain business operations.**—For the purpose of assisting blind persons to become self-supporting the North Carolina State Commission for the Blind is hereby authorized to carry on activities to promote the rehabilitation and employment of the blind, including the operation of various business enterprises suitable for the blind to be employed in or to operate. The Executive Budget Act shall apply to the operation of such enterprises as to all appropriations made by the State to aid in the organization and the establishment of such businesses. Purchases and sales of merchandise or equipment, the payment of rents and wages to blind persons operating such businesses, and other expenses thereof, from funds derived from local subscriptions and from the day by day operations shall not be subject to the provisions of law regulating purchases and contracts, or to the deposit and disbursement thereof applicable to State funds but shall be supervised by the State Commission for the Blind. All of the business operations under this law, however, shall be subject to regular audits by the State Auditor. (1945, c. 72, s. 2.)

§ **111-28. Commission authorized to receive federal, etc., grants for benefit of needy blind.**—The North Carolina State Commission for the Blind is hereby authorized and empowered to receive grants in aid from the federal government or any State or federal agency for the purpose of rendering other services to the needy blind and those in danger of becoming blind; and all such grants so made and received shall be paid into the State treasury and credited to the account of the North Carolina State Commission for the Blind, to be used in carrying out the provisions of this law.

The North Carolina State Commission for the Blind is hereby further authorized and empowered to make such rules and regulations as may be required by the federal government or State or federal agency as a condition for receiving such federal funds, not inconsistent with the laws of this State.

Whenever the words "Social Security Board" appear in §§ 111-6, 111-13 to 111-26 the same shall be interpreted to include any agency of the federal government which may be substituted therefor by law.

The North Carolina State Commission for the Blind is hereby authorized and empowered to enter into reciprocal agreements with public welfare agencies in other states relative to the provision of assistance and services to residents, nonresidents, or transients, and cooperate with other agencies of the State and federal governments in the provision of such assistance and services and in the study of the problems involved.

The North Carolina State Commission for the Blind is hereby authorized and empowered to establish and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files, and communications of the department.

It shall be unlawful, except for purposes directly connected with the administration of aid to the needy blind and in accordance with the rules and regulations of the State Commission for the Blind, for any person or persons to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or name of, or any information concerning, persons applying for or receiving aid to the needy blind, directly or indirectly derived from the records, papers, files, or communications of the State Commission for the Blind or the board of county commissioners or the county welfare department, or acquired in the course of the performance of official duties. (1939, c. 124; 1941, c. 186.)

§ 111-28.1. Commission authorized to cooperate with federal government in rehabilitation of blind.—The North Carolina State Commission for the Blind is hereby authorized and empowered to make the necessary rules and regulations to cooperate with the federal government in the furtherance of the provisions of the act of Congress known as the Barden-Rehabilitation Act (Volume fifty-seven, United States Statutes at Large, chapter one hundred and ninety) providing for the rehabilitation of the blind. (1945, c. 72, s. 1.)

§ 111-29. Expenditure of equalizing funds; grants affording maximum federal aid; lending North Carolina reports. — In addition to the powers and duties imposed upon the North Carolina State Commission for the Blind, the said Commission shall be and hereby is charged with the powers and duties hereinafter enumerated; that is to say:

(1) The North Carolina State Commission for the Blind is hereby authorized to expend such funds as are appropriated to it as an equalizing fund for aid to the needy blind for the purpose of equalizing the financial burden of providing relief to the needy blind in the several counties of the State, and equalizing the grants received by the needy blind recipients. Such amount shall be expended and disbursed solely for the use of the needy blind coming within the eligibility provisions outlined in chapter one hundred and twenty-four of the Public Laws of one thousand nine hundred and thirty-seven. Said amount shall be distributed to the counties according to the needs therein in conformity with the rules and regulations adopted by the North Carolina State Commission for the Blind, producing as far as possible a just and fair distribution thereof.

(2) The North Carolina State Commission for the Blind is hereby authorized to make such grants to the needy blind of the State as will enable said Commission to receive the maximum grants from the federal government for such purpose.

(3) The North Carolina State Commission for the Blind is hereby authorized to work out plans with the Secretary of State for lending to needy blind lawyers volumes of the North Carolina reports in his custody that are unused or have become damaged. The Secretary of State is hereby authorized to lend such reports to the Commission for the Blind for relending to needy blind lawyers. Such reports may be recalled at any time by the Secretary of State upon giving fifteen days' written notice to the Commission for the Blind which shall remain responsible for said reports until they are returned. The Commission shall relend such reports only to blind lawyers, who, after an

investigation by the Commission, are determined to have no income, or an income insufficient to purchase such reports. (1943, c. 600.)

§ 111-30. Personal representatives for certain recipients of aid to the blind.—If any otherwise qualified applicant for or recipient of aid to the blind is or shall become unable to manage the assistance payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, a petition may be filed by a relative of said blind person, or other interested person, or by the Director of Public Welfare before the appropriate court under § 111-31, in the form of a verified written application for the appointment of a personal representative for the purpose of receiving and managing public assistance payments for any such recipient, which application shall allege one or more of the above grounds for the legal appointment of such personal representative.

The court shall summarily order a hearing on the petition and shall cause the applicant or recipient to be notified at least five days in advance of the time and place for the hearing. Findings of fact shall be made by the court without a jury, and if the court shall find that the applicant for or recipient of aid to the blind is unable to manage the assistance payments, or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, the court may thereupon enter an order embracing said findings and appointing some responsible person as personal representative of the applicant or recipient for the purposes set forth herein. The personal representative so appointed shall serve with or without bond, in the discretion of the court, and without compensation. He will be responsible for receiving the monthly assistance payment and using the proceeds of such payment for the benefit of the recipient of aid to the blind. Such personal representative shall be responsible to the court for the faithful discharge of the duties of his trust. The court may consider the recommendation of the Director of Public Welfare in the selection of a suitable person for appointment as personal representative for the limited purposes of §§ 111-30 to 111-33. The personal representative so appointed may be removed by the court, and the proceeding dismissed, or another suitable personal representative appointed. All costs of court with respect to any such proceedings shall be waived.

From the order of the court appointing or removing such personal representative, an appeal may be had to the judge of superior court who shall hear the matter de novo without a jury. (1945, c. 72, s. 4; 1953, c. 1000; 1961, c. 666, s. 2.)

§ 111-31. Courts for purposes of §§ 111-30 to 111-33; records.—For the purposes of §§ 111-30 to 111-33 the court may be either a domestic relations court established pursuant to article 13, chapter 7, General Statutes, or the clerk of the superior court in the county having responsibility for the administration of the particular aid to the blind payments. The court may, for the purposes of §§ 111-30 to 111-33, direct the Director of Public Welfare to maintain records pertaining to all aspects of any personal representative proceeding, which the court may adopt as the court's record and in lieu of the maintenance of separate records by the court. (1961, c. 666, s. 2.)

§ 111-32. Findings under § 111-30 not competent as evidence in other proceedings.—The findings of fact under the provisions of § 111-30 shall not be competent as evidence in any case or proceeding dealing with any subject matter other than provided in §§ 111-30 to 111-33. (1961, c. 666, s. 2.)

§ 111-33. Sections 111-30 to 111-33 are not to affect provisions for payments for minors.—Nothing in §§ 111-30 to 111-33 is to be construed as affecting that portion of the State plan for aid to the blind which provides that payments for eligible blind minors should be made to the parent, legal guardian, relatives or other persons "in loco parentis" of the blind minor, and that payments may be made to the minor if he is emancipated. (1961, c. 666, s. 2.)

Chapter 112.

Confederate Homes and Pensions.

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ARTICLE 1.

Confederate Woman's Home.

§ **112-1. Incorporation and powers of Association.** — Julian S. Carr, John H. Thorp, Robert H. Ricks, Robert H. Bradley, E. R. Preston, Simon B. Taylor, Joseph F. Spainhour, A. D. McGill, M. Leslie Davis, T. T. Thorne, and W. A. Grier, together with their successors in office, are constituted a body politic and corporate under the name and style of Confederate Woman's Home Association, and by that name may sue and be sued, purchase, hold and sell real and personal property, and have all the powers and enjoy all the privileges of a charitable corporation under the law enabling them to establish, maintain, and govern a home for the deserving wives, daughters and widows of North Carolina Confederate Soldiers.

The corporation may solicit and receive donations in money or property for the purpose of obtaining a site on which to erect its buildings, for equipping, furnishing and maintaining them, or for any other purpose whatsoever; and said corporation may invest its funds to constitute an endowment fund. Said corporation shall have a corporate existence until January 1, 1970. It shall also have the power to solicit and receive donations for the purpose of aiding indigent Confederate women at their homes in the various counties of the State, and shall have all powers necessary to this end. (1913, c. 62, s. 1; C. S., s. 5134; 1949, c. 121; 1953, c. 62; 1959, c. 222.)

§ 112-2. Board of directors appointed; officers and duties.—The powers conferred by this article shall be exercised by a board of directors, consisting of seven members, to be appointed by the Governor of the State and who shall hold office for the term of two years, and in case of a failure to appoint, the members of such board of directors shall hold their offices until their successors are appointed. The board of directors shall elect a president and a secretary, and the Treasurer of North Carolina shall be the Treasurer of the Woman's Confederate Home Association. The board of directors shall appoint such other officers, agents, or employees as they shall see fit, and prescribe the duties of such officers and employees; establish rules and regulations for the maintenance and government of the home, and have entire control and management of it; prescribe the rules for the admission of the inmates and their discharge, and take whatever action may be desirable in reference to the collection and disbursement of subscriptions, either to the home or to the needy Confederate women elsewhere in the State. The accounts of the officers and employees shall be duly audited and published and report thereof made as now required by law from the other State institutions. (1913, c. 62, s. 2; C. S., s. 5135.)

§ 112-3. Location of Home.—The board of directors shall locate the Confederate Woman's Home at such place in North Carolina as they shall deem proper, and it shall be located in or near that town or city offering the largest inducement having due regard to the desirability and suitability for the location of the Home. (1913, c. 62, s. 2; C. S., s. 5136.)

§ 112-4. Advisory board of lady managers.—Mrs. Hunter Smith, Mrs. N. B. Mann, Mrs. T. L. Costner, Mrs. R. F. Dalton, Mrs. F. A. Woodard, Mrs. W. H. Mendenhall, Mrs. E. C. Chambers, Mrs. Charles S. Wallace, Mrs. M. O. Winstead, Mrs. Marshall Williams are appointed an advisory board of lady managers for a term of two years, whose duties it shall be to assist the directors in the equipment and management of the Home as they may be requested to do, shall solicit contributions for the Home and generally shall use all the powers given to and perform all the duties required of them by the board of directors. The successors in office of said lady managers shall be selected one from each congressional district in the State. All vacancies in said advisory board, whether from expiration of office or otherwise, shall, subject to the limitations herein set out respecting the way of selection, be filled by the board of directors. (1913, c. 62, s. 3; C. S., s. 5137.)

§ 112-5. Reversion of property. — If the land on which the said Home shall be located or used in connection therewith shall at any time cease to be used for that purpose, or for the use and benefit of the dependent wives and widows of the Confederate soldiers as herein specified, or other worthy indigent Confederate women of this State, the same shall revert to the person or persons donating the same, if it has been acquired entirely by donations; otherwise, it shall revert to the State; but in all cases of nonuser for the said purpose, the buildings thereon, the furniture and equipment generally of every nature, shall revert and belong to the State. (1913, c. 62, s. 4; C. S., s. 5138.)

§ 112-6. Compensation of directors.—The directors provided for in this article shall be entitled to their actual expenses incurred in attending the meetings of the board of directors since their appointment, and also in attending future meetings of the board, the same to be paid out of the funds of the Confederate Woman's Home. (1915, c. 206; C. S., s. 5139.)

ARTICLE 2.

Pensions.

Part 1. Pension Boards.

§ 112-7. State Board; examination of applications. — The Governor, Attorney General, and Auditor shall be constituted a State Board of Pensions, which shall examine each application for a pension, and for this purpose it may take other testimony than that sent by the county boards. Such applications as are approved by the State Board shall be paid by the Treasurer, upon the warrant of the Auditor. (1921, c. 189, s. 1; C. S., s. 5168(a).)

§ 112-8. State Board to make rules.—The State Board of Pensions is empowered to prescribe rules and regulations for the more certainly carrying into effect this article according to its true intent and purpose. (1921, c. 189, s. 2; C. S., s. 5168(b).)

§ 112-9. Auditor to transmit lists to clerks of court. — The Auditor shall, as soon as the same is ascertained, transmit to the clerks of the superior court of the several counties a correct list of the pensioners, with their post offices, as allowed by the State Board of Pensions. (1921, c. 189, s. 3; C. S., s. 5168(c); 1929, c. 296, s. 1.)

§ 112-10. County board.—The clerk of the superior court, together with three reputable ex-Confederate soldiers, or sons, or daughters, or grandsons, or granddaughters of ex-Confederate soldiers, to be appointed by the State Auditor, shall constitute a county board of pensions for their county. (1921, c. 189, s. 4; C. S., s. 5168(d); 1929, c. 92, s. 1; 1933, c. 465, s. 1.)

§ 112-11. Compensation of members of the county board of pensions.—Each member of the county board of pensions shall be entitled to two dollars a day, not exceeding three days in any year, when attending the annual meeting of said board, the said compensation to be paid by the county treasurer on the order of the board of county commissioners. (1903, c. 273, s. 19; Rev., s. 2783; C. S., s. 3913.)

§ 112-12. Examination and classification by county board; certificate of disability.—All persons entitled to pensions under this article, not now drawing pensions, shall appear before the county board of pensions for examination and classification in compliance with the provisions of this article: Provided, that all such as are unable to attend shall present a certificate from a creditable physician, living and practicing medicine in the community in which the applicant resides, that the applicant is unable to attend. (1921, c. 189, s. 5; C. S., s. 5168(e); Ex. Sess. 1924, c. 106; 1941, c. 152, s. 1.)

§ 112-13. Annual revision of pension roll. — On the first Mondays of February and July of each year the pension board of each county shall revise and purge the pension roll of the county, first giving written notice of ten days to the pensioner who is alleged not to be rightfully on the State pension roll, to show cause why his name should not be stricken from the pension list, and the board shall meet another day to consider the subject of purging the list. (1921, c. 189, s. 6; C. S., s. 5168(f); Ex. Sess. 1924, c. 106.)

Part 2. Persons Entitled to Pensions; Classification and Amount.

§ **112-14. Persons disabled in militia service; their widows and orphans.** — Every person who may have been disabled by wounds in the militia service of the State, or rendered incapable thereby of procuring subsistence for himself and family, and the widows and orphans of such persons who may have died from such wounds, or from disease contracted in such service, shall be entitled to pensions as hereinafter provided for Confederate soldiers. (R. C., c. 84; Code, s. 3472; Rev., s. 4990; C. S., s. 5147.)

§ **112-15. Blind or maimed Confederate soldiers.**—All ex-Confederate soldiers and sailors who have become totally blind since the war, or who lost their sight or both hands or feet, or one arm and one leg, in the Confederate service, shall receive four hundred and twenty dollars a year. (1899, c. 619; 1901, c. 332, s. 5; Rev., s. 4991; 1907, c. 60; 1921, c. 189, s. 7; C. S., s. 5168(g); Ex. Sess. 1924, c. 83; 1925, c. 275, s. 6, subsec. 24.)

§ **112-16. Helpless or demented widows of Confederate soldiers.** — Every widow of a Confederate soldier who married and was widowed prior to one thousand eight hundred and sixty-six and who has not remarried and who bore and raised legitimate child or children of the deceased Confederate soldier, and who has lost her mind, or become helpless, and is not confined in an asylum, or is not an inmate of any charitable institution, shall receive the same pay and in the same manner as blind Confederate soldiers. (1923, c. 3; C. S., s. 5168(h).)

§ **112-17:** Repealed by Session Laws 1945, c. 699, s. 2.

§ **112-18. Classification of pensions for soldiers and widows.**—There shall be paid out of the treasury of the State, on the warrant of the Auditor, to every person who has been for twelve months immediately preceding his application for pension a bona fide resident of the State, and who is incapacitated for manual labor, and was a soldier or sailor in the service of the Confederate States of America during the War between the States, and to the widow of any deceased officer, soldier, or sailor who was in the service of the Confederate States of America during the War between the States, if such widow was married to such soldier, or sailor, prior to the date set forth in the widow's classification in this section, and if she has married again, is widow at the date of her application, the following sums annually, according to the degree of disability ascertained by the following grades:

Class "A." To all Confederate soldiers not included in § 112-17, who are now disabled from any cause to perform manual labor, twelve hundred dollars ($1200.00).

Class "B." To such colored servants who went with their masters to the war and can prove their service to the satisfaction of the county and State pension boards, four hundred and fifty-six dollars ($456.00).

Widows

Class "A." To the widows of ex-Confederate soldiers who are blind in both eyes or totally helpless, nine hundred dollars ($900.00).

Class "B." To the widows of ex-Confederate soldiers who were married to such soldiers on or before January first, eighteen hundred and eighty, and to such widows who were married to such soldiers subsequent to January first, eighteen hundred and eighty, and who are now on the pension rolls, by virtue of previous statutes, four hundred ninety-two dollars ($492.00). Provided, that the State Board of Pensions upon the recommendation of the county pension board, may add to Class B list of pensions such widows of Confederate veterans who were married to the deceased veterans prior to the year one thousand eight hundred and ninety-nine and who are now more than sixty years of age, as in the judgment of the State Board of Pensions are meritorious and deserving, and who from old age or other afflictions are unable to earn their own living. (1921, c. 189, s. 9; Ex. Sess. 1921, c. 89; C. S., s. 5168(j); Ex. Sess. 1924, c. 111; 1927, c. 96, s. 2; 1929, c. 300, s. 1; 1935, c. 46; 1937, c. 318; 1945, c. 699, s. 1; c. 1051, ss. 1-3; 1949, c. 1158, ss. 1-4; 1953, c. 1225; 1957, c. 1395, s. 1.)

§ 112-19. Certain widows of Confederate soldiers placed on Class B pension roll.—All widows of Confederate soldiers who have lived with such soldiers for a period of five years prior to the death of such soldier, or for any period of time if a child was born of said marriage, and where the death of the soldier occurred since the year one thousand eight hundred ninety-nine, shall, upon proper proof of such facts, be placed upon the pension list in Class B, and paid from the pension fund such pensions as are allowed to other widows of Confederate soldiers in Class B: Provided, that no payments shall be made to any widows of Confederate soldiers as hereinbefore referred to, except and until they shall have qualified for said benefits under and pursuant to the general State pension laws as modified hereby. (1937, cc. 181, 454; 1953, c. 1169; 1959, c. 1004.)

§ 112-20. Persons not entitled to pensions.—No person shall be entitled to receive the benefits of this article:

(1) Who is an inmate of the Soldiers' Home at Raleigh;
(2) Who is confined in an asylum or county home;
(3) Repealed by Session Laws 1959, c. 181, s. 1;
(4) Who holds a national, State, or county office, which pays annually in salary or fees the sum of three hundred dollars ($300);
(5) Who was a deserter, or the widow of such deserter; but no soldier who has been honorably discharged, or who was in service at the surrender shall be considered a deserter in the meaning of this section;
(6) Who is receiving aid from the State under any act providing for the relief of soldiers who are blind or maimed;
(7) Who owns in his own right, or in the right of his wife, property whose tax valuation exceeds two thousand dollars ($2,000), or who, having owned property in excess of two thousand dollars ($2,000), has disposed of the same by gift or voluntary conveyance to his wife, child, next of kin, or to any other person since the eleventh day of March, one thousand eight hundred and eighty-five: Provided, that the county board of pensions may place upon the pension roll, in the classes to which they would otherwise belong, any Confederate soldier, sailor, or widow disqualified by the provisions of this section, who may appear to be unable to earn a living from property valued as much as two thousand dollars ($2,000) or more for taxation, and who may appear to the board from special circumstances worthy to be placed upon the pension roll. (1921, c. 189, s. 10; C. S., s. 5168(k); 1959, c. 181, s. 1.)

Editor's Note.—Section 2 of the act repealing subdivision (3) provides: "It is the intent of this act that any widow of a Confederate soldier, who is qualified to receive a pension from this State under article 2 of chapter 112 of the General Statutes, may continue to receive such a pension, even though she is eligible for and receives a pension from any other state or from the United States."

§ 112-21. Removal from pension lists of persons eligible for old age assistance. — All widows of Confederate veterans and all colored servants of Confederate soldiers who are eligible for old age assistance under the provisions of §§ 108-15 to 108-76, from and after the first day of June, one thousand nine hundred thirty-nine, shall not be entitled to any pension provided by the provisions of chapter 112, entitled "Confederate Homes and Pensions," and any acts of the General Assembly amendatory thereof, or by virtue of any special or general law relating to pensions for widows of Confederate veterans or colored servants of Confederate soldiers.

Before the first day of June, one thousand nine hundred thirty-nine, the county board of welfare in every county in this State shall make a complete and thorough examination and investigation of all widows of Confederate veterans and all colored servants of Confederate soldiers whose names are on the pension roll in each county, and shall determine the eligibility of such pensioners for old age assistance under the provisions of §§ 108-15 to 108-76 without any applications being made by such persons for old age assistance as required by said law, and after making such investigation, shall determine the eligibility of such persons for old age assistance and the amount of assistance which any such person is entitled to receive in accordance with the provisions of the Old Age Assistance Act. After such investigations and determinations have been made, the county board of welfare shall notify the county pension board in the county of such county board of welfare of the persons who are found to be eligible for old age assistance under the provisions of said law. Upon such certification to the county pension board, the county pension board shall revise the list of pensioners in said county and shall exclude from said list all the widows of Confederate veterans and all colored servants of Confederate soldiers who are certified as being eligible for old age assistance. The county pension board shall, upon receipt of such certification from the county board of welfare, and revision of the pension list as aforesaid, notify the State Board of Pensions of the revision of the pension list for said county and the names eliminated therefrom. The county board of welfare, in making the aforesaid certification to the county pension board, shall also send a copy thereof to the State Board of Pensions, and such certification from the county board of welfare to the State Board of Pensions shall be sufficient authority for removal of such names from the pension list by the State Board of Pensions. If it should thereafter be determined that such person so removed from the pension list was not eligible for old age assistance by the authority administering said law, the award for old age assistance to such person is revoked, the name of such person, if otherwise eligible, shall be restored to the said pension list by the county pension board, and the full pension to which such person would be entitled, if the name had not been withdrawn from said list, shall be paid.

As to all persons found eligible for old age assistance whose names are removed from the pension list as herein required, the amount necessary for payment of awards for old age assistance shall be paid entirely out of State and federal funds.

In the event it is determined by the county board of welfare that the awards which such eligible persons are entitled to receive shall be less than the amount paid such persons as pensions, such names shall not be withdrawn from the said pension list, and the county board of welfare shall not make any award of old age benefits to such persons.

After the county pension board has revised the list of pensions in each county as herein provided, and after having certified the same to the State Board of Pensions, the State Board of Pensions shall certify the revised list of pensioners to the State Auditor and the State Auditor shall transmit to the clerks of the superior court in the several counties a correct revised list of pensioners, with their post offices, as allowed by the State Board of Pensions. (1937, c. 227; 1939, c. 102.)

Part 3. Application for Pensions.

§ **112-22. Forms provided by Auditor.**—The Auditor of the State shall provide a form of application (according to the terms of this article), and have the same printed and sent to the clerks of the superior court of the several counties of the State for use of applicants. (1921, c. 189, s. 11; C. S., s. 5168(1).)

§ **112-23. Application by person, guardian or receiver.** — No soldier, officer, sailor, or widow shall be entitled to the benefits of this chapter except upon his or her own application, or, in case he or she is insane, upon the application of his or her guardian or receiver. (1921, c. 189, s. 12; C. S., s. 5168(m).)

§ **112-24. Applications by persons not on rolls.** — Before any officer, soldier, or sailor, not now receiving a pension, shall receive any part of the annual appropriation made for pensions he shall, on or before the first Monday in July of every year, file with the superior court clerk of the county wherein he resides an application for relief, setting forth in detail the company and regiment or battalion in which he served at the time of receiving the wound; the time and place of receiving the wound; whether he is holding an office in the State, United States, or county from which he is receiving the sum of three hundred dollars ($300) in fees or salary; whether he is worth in his own right or in the right of his wife, property at its assessed value for taxation to the amount of two thousand dollars ($2,000); whether he is receiving any aid from the State of North Carolina under any other statute providing for the relief of the maimed and blind soldiers of the State; and whether he is a citizen of the State of North Carolina. Such application shall be verified by the oath of the applicant made before anyone empowered to administer oaths, and shall be accompanied by the affidavit of one or more credible witnesses, stating that he or they verily believe the applicant to be the identical person named in the application, and that the facts stated in the application are true; and when the county board of pensions is satisfied with the justice of the claim made by the applicant they shall so certify the same to the Auditor of the State under their hands and the seal of the superior court of their county, which shall be impressed by the clerk of the superior court of the county; and there shall accompany the certificate so sent to the Auditor the application, affidavit, and proofs taken by them, which papers shall be kept on file in the Auditor's office. Clerks of the superior courts shall receive no fees whatsoever for services herein required of them. (1921, c. 189, s. 13; C. S., s. 5168(n).)

§ **112-25. Time for forwarding certificate; Auditor to issue warrant.** —It shall be the duty of the clerk of the superior court of the county where the application is filed to forward to the Auditor of the State, immediately after the certificate required by § 112-24 is made and before the first Monday in August in each year, the application and proofs and certificates, and upon the State Board of Pensions being satisfied of the truth and genuineness of the application, the Auditor shall issue his warrant on the State Treasurer for the same. (1921, c. 189, s. 14; C. S., s. 5168(o).)

§ **112-26. Subsequent certificate; suggestion of fraud.** — After an application has once been passed upon and allowed by the county and State boards, it shall be necessary only for the applicant to file with the Auditor of State a certificate from the clerk of the superior court of the county in which the application was originally filed, setting forth that the applicant is the identical person named in the original application which is on file in the Auditor's office, and that the applicant is alive, but still disabled, and a citizen of this State, and still entitled to the benefits of this article, which certificate may be passed upon by the State Board, upon suggestions of fraud, before the Auditor draws his warrant upon such certificate. (1921, c. 189, s. 15; C. S., s. 5168(p).)

Part 4. Payment of Pensions; Warrants.

§ **112-27. Payment of pensions in advance; acknowledgement of receipt of warrants.** — Pensions are payable monthly in advance, and the State Auditor shall divide into twelve equal installments the yearly amount due each pensioner and shall transmit to the clerks of the superior court of the various counties warrants for the same on or before the first day of each calendar month, the installment then due. It shall be the duty of the clerk of the superior court to acknowledge to the Auditor the receipt of such warrants by the next mail after their receipt, to deliver or mail forthwith to each pensioner in his county his warrant, and to post in the courthouse a list of the pensioners to whom he has mailed or delivered warrants. (1921, c. 189, s. 16; C. S., s. 5168(q); 1939, c. 187, s. 1.)

Installments of a pension payable in the future are not assignable. Gill v. Dixon, 131 N.C. 87, 42 S.E. 538 (1902).

§ **112-28. Warrants payable to pensioner or order; indorsement; copy of power of attorney.** — The Auditor shall issue his warrant payable to the pensioner, or order, and such warrants shall not be paid by the Treasurer without the indorsement of the payee or his duly appointed attorney in fact, specially authorized to make such indorsement; and if such indorsement is made by the attorney in fact of the payee, a copy of the power of attorney, duly attested by the clerk of the superior court or a justice of the peace or notary public of the county in which the payee resides shall be attached to the warrant. (1921, c. 189, s. 17; C. S., s. 5168(r); 1941, c. 152, s. 3.)

Part 5. Funds Provided for Pensions.

§ **112-29. Limit and distribution of appropriation.**—The State Auditor is authorized, empowered and directed to apportion, distribute and divide the money appropriated by the State for pensions, and to issue warrants to the several pensioners pro rata in their respective grades: Provided, that if the money appropriated by the General Assembly for the Confederate soldiers, widows and servants is more than enough to pay them the amounts mentioned in this chapter, or if for any other cause, after paying the Confederate soldiers, widows and servants the amount stipulated in their respective grades as set out in this chapter, there should be an excess of the money appropriated for the first year, then the balance in the fund so appropriated for the first year shall revert and supplement the fund appropriated for the second year of the biennium: Provided, further, that if any moneys herein appropriated for the purposes aforesaid, shall not be needed to pay the Confederate soldiers, widows and servants the amounts stipulated in their respective grades, then such moneys shall be paid by the State Board of Pensions into the treasury and become a part of the general fund appropriated by the State for other purposes: Provided, that no greater amount shall be paid out under this chapter than is appropriated under the General Appropriation Maintenance Act. (1921, c. 189, s. 20; C. S., s. 5168(u); 1927, c. 96, s. 4.)

Legislative Right. — It is the exclusive right of the legislature to determine and declare by whom and how the indigent of the State entitled to support shall be ascertained and from what fund and by whom allowances for their support shall be made. Board of Educ. v. Commissioners of Bladen, 113 N.C. 379, 18 S.E. 661 (1893).

§ **112-30. Increase by counties; special tax.** — The county commissioners of each county in the State are authorized and empowered, if in their discretion such levy is deemed advisable, to levy for each year, at the same time and in the same manner as the levy of other county taxes, a special tax not exceeding two cents on the hundred dollars valuation of property and six cents on each taxable poll for the purpose of increasing the pensions of Confederate soldiers and widows.

Such tax shall be collected and accounted for by the sheriff or other tax collector in the same manner and under the same penalties as other taxes levied for the county, and the net proceeds thereof shall be applied each year to increase pro rata the pensions of such persons as stand upon the Confederate pension roll of the county for the year in which the tax is levied.

The amount collected under this section shall be disbursed by the county commissioners pro rata to the various pensioners in such county as shown by the State pension list for that county. (1921, c. 189, s. 21; C. S., s. 5168(v).)

Local Modification. — Cumberland: 1907, c. 555.

Constitutionality.—Whether this section be regarded as general or special, it meets the requirements of N.C. Const., Art. V, § 6, and its efficacy is not impaired by such section of the Constitution. Brown v. Jennings, 188 N.C. 155, 124 S.E. 150 (1924).

Part 6. Miscellaneous Provisions.

§ **112-31. Officer failing to perform duties.**—Any officer or other person who shall neglect or refuse to discharge the duties imposed upon him by this article shall be guilty of a misdemeanor, and upon conviction thereof in the superior court shall be fined or imprisoned at the discretion of the court. (1921, c. 189, s. 22; C. S., s. 5168(w).)

§ **112-32. Speculation in pension claims a misdemeanor.**—Any person who shall speculate or purchase for a less sum than that to which each may be entitled the claims of any soldier or sailor or widow of a deceased soldier or sailor, allowed under the provisions of this article, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both in the discretion of the court. (1921, c. 189, s. 23; C. S., s. 5168(x).)

Installments of a pension payable in the future are not assignable. Gill v. Dixon, 131 N.C. 87, 42 S.E. 538 (1902).

§ **112-33. County payment of burial expenses.** — Whenever in any county of this State a Confederate pensioner on the pension roll of the county or the widow of a Confederate soldier shall die, it shall be the duty of the board of commissioners of such county, upon the certificate of such fact by the clerk of the superior court and recommendation of the chairman of the pension board of the county, to order the payment out of the general fund of the county of a sum not exceeding thirty dollars ($30), to be applied toward defraying the burial expenses of such deceased pensioner or widow. (1921, c. 189, s. 24; C. S., s. 5168(y).)

Residence of Pensioner Immaterial. — This section requires the amount stated to be paid by the board of commissioners of the county on the pension roll of which the name of the pensioner appears, irrespective of residence. Hannah v. Board of Comm'rs, 176 N.C. 395, 97 S.E. 160 (1918).

§ **112-34. State payment of burial expenses.** — Whenever in any county of this State a Confederate pensioner on the pension roll shall die, and such fact has been determined by the State Auditor, the State Auditor shall forward to the clerk of the superior court of the county in which such pensioner resided a State warrant in the amount of one hundred fifty dollars ($150.00), to be paid by the clerk of the superior court of the county in which such pensioner resided to the personal representative, or next of kin of such deceased pensioner to be applied toward defraying the funeral expenses of such deceased pensioner: Provided, that this section shall also apply to pensioners transferred to old age assistance under the provisions of § 112-21: Provided further, that this section shall apply to persons who otherwise would be entitled to pensions but who are not on pension roll at time of death because of being admitted to county home, county institution or State institution. (1939, c. 187, s. 2; 1941, c. 152, s. 4; 1949, c. 1018; 1957, c. 1395, s. 2.)

§ **112-35. Peddling without license.** — All ex-Confederate soldiers who are without means of support other than their manual labor, and who are incapacitated to perform manual labor for any reason other than by their vicious habits, and now citizens of this State, shall be allowed to peddle drugs, goods, wares, and merchandise in any of the counties of this State without a license therefor. Before any soldier shall be entitled to the benefits of this section he shall make application to the county board of pensioners of the county of which he is a resident, and show to the satisfaction of the county board of pensions that he is entitled to the same by having served in the Confederate army or navy during the War between the States, and that he is incapacitated to perform manual labor, and does not own property the tax valuation of which exceeds the sum of two thousand dollars ($2,000) in his own name or in the name of his wife, deeded to her by him since the first day of March, one thousand nine hundred and two. (1921, c. 189, s. 25; C. S., s. 5168(z).)

Cross Reference.—As to exemption from jury duty, see § 9-19.

Quoted in Eastern Carolina Tastee-Freez, Inc. v. Raleigh, 256 N.C. 208, 123 S.E.2d 632 (1962).

§ **112-36. Taking fees for acknowledgments by pensioners.**—It shall be unlawful for any clerk of the superior court, notary public or any magistrate to charge any Confederate pensioner or the widow of such Confederate pensioner receiving a pension from the State of North Carolina for taking acknowledgments in connection with pension papers.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days. (1925, c. 68.)

§ **112-37. Officers required to check roll of pensioners with record of vital statistics.**—It shall be the duty of the register of deeds and the clerk of the court of each county in the State of North Carolina to check the roll of pensioners furnished the clerks of the court of the various counties of the State, with the record of vital statistics in the office of the register of deeds, within ten days after receipt of the pension roll, which roll shall be furnished by the State Auditor on or before October fifteenth and April fifteenth of each year, and certify under their hands and seals of their office, the names of all deceased pensioners with dates of their death, whose names appear upon the pension roll, to the State Auditor. The State Auditor at the time of furnishing the pension rolls to the register of deeds and clerk of the superior court of each county, as herein provided, shall also furnish copies of said pension rolls to the State Registrar of Vital Statistics, who shall cause the same to be checked against the vital statistics records in his office and certify to the State Auditor the names of all persons appearing on said pension rolls, which the records in his office show to be decreased, together with the dates of their death. (1931, c. 144.)

Chapter 113.

Conservation and Development.

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SUBCHAPTER I. DEPARTMENT OF CONSERVATION AND DEVELOPMENT.

ARTICLE 1.

Organization and Powers.

§ **113-1. Meaning of terms.**—In this article, unless the context otherwise requires, the expression "department" means the Department of Conservation and Development; "board" means the Board of Conservation and Development; and "director" means the Director of Conservation and Development. (1925, c. 122, s. 3.)

§ **113-2. Department created.** — There is hereby created and established a department to be known as the "Department of Conservation and Development," with the organization, powers and duties hereafter defined in this article. (1925, c. 122, s. 2.)

Stated in State ex rel. North Carolina Util. Comm'n v. Story, 241 N.C. 103, 84 S.E.2d 386 (1954).

§ **113-3. Duties of the Department.**—(a) It shall be the duty of the Department, by investigation, recommendation and publication, to aid:

(1) In the promotion of the conservation and development of the natural resources of the State;
(2) In promoting a more profitable use of lands and forests;
(3) In promoting the development of commerce and industry;
(4) In coordinating existing scientific investigations and other related agencies in formulating and promoting sound policies of conservation and development; and

(5) To collect and classify the facts derived from such investigations and from other agencies of the State as a source of information easily accessible to the citizens of the State and to the public generally, setting forth the natural, economic, industrial and commercial advantages of the State.

(b) Repealed by Session Laws 1959, c. 779, s. 3. (1925, c. 122, s. 4; 1957, c. 753, s. 3; c. 1424, s. 1; 1959, c. 779, s. 3.)

Cross References. — See note under § 113-8. As to Wildlife Resources Law, see § 143-237 et seq.

Cited in North Carolina State Ports Authority v. First-Citizens Bank & Trust Co., 242 N.C. 416, 88 S.E.2d 109 (1955).

§ **113-4. Board of Conservation and Development.** — The control and management of the Department shall be vested in a board to be known as the "Board of Conservation and Development," to be composed of twenty-four members. (1925, c. 122, s. 5; 1927, c. 57, s. 3; 1941, c. 45; 1961, c. 197, s. 1; 1965, c. 826, s. 1.)

Editor's Note. — The 1965 amendment substituted "twenty-four members" for "twenty-eight members" at the end of this section.

Cited in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

§ **113-5. Appointment and terms of office of Board.** — The terms of office of the members of the Board of Conservation and Development now serving in such capacity shall expire at midnight on the 30th day of June, 1965. On the 1st day of July, 1965, the Governor shall appoint twenty-four persons to be members of the Board of Conservation and Development. Twelve members shall be appointed to serve for terms of two years each, and twelve members shall be appointed to serve for four years each. Thereafter, upon the expiration of their respective terms, the successors of said members shall be appointed for terms of four years each. All members appointed to the Board shall serve for the duration of their respective terms and until their successors are appointed and qualified. Any vacancy occurring in the membership of said Board because of death, resignation or otherwise shall be filled by the Governor for the unexpired term of such member. In making the appointments, the Governor shall take into consideration the functions and activities of the Board and in selecting the members shall give, as nearly as possible, proportionate representation to each and all of such functions and activities of the Department. (1925, c. 122, s. 6; 1927, c. 57, s. 3; 1941, c. 45; 1945, c. 638, s. 1; 1953, c. 81; 1957, c. 1428; 1961, c. 197, s. 2; 1965, c. 826, s. 2.)

Editor's Note. — The 1965 amendment substituted "1965" for "1961" in the first and second sentences, "twenty-four" for "twenty-eight" in the second sentence, and "twelve" for "fourteen" twice in the third sentence.

§ **113-6. Meetings of the Board and Commercial and Sports Fisheries Committee.**—The said Board shall meet at least four times each year; one meeting to be held at some coastal area in the State, and the other three meetings to be held at a date and place to be fixed by the Board, and it may hold such other meetings as may be deemed necessary by the Board for the proper conduct of the business of the Department. The Commercial and Sports Fisheries Committee of the Board of Conservation and Development shall meet once each year prior to the meeting held in the coastal area. It will at that time hear recommendations of persons interested in the conservation of marine and estuarine resources. (1925, c. 122, s. 7; 1927, c. 57, s. 3; 1941, c. 45; 1945, c. 638, s. 2; 1947, c. 699; 1957, c. 248; 1965, c. 957, s. 10.)

Editor's Note.—The 1965 amendment rewrote the last two sentences.

§ **113-7. Compensation of Board.**—The members of the Board shall receive not more than seven dollars per diem and actual travel expenses while in attendance on Board meetings or while engaged in the business of the Department. (1925, c. 122, s. 8; 1927, c. 57, s. 3; 1941, c. 45; 1951, c. 408.)

§ **113-8. Powers and duties of the Board.**—The Board shall have control of the work of the Department, and may make such rules and regulations as it may deem advisable to govern the work of the Department and the duties of its employees.

It shall make investigations of the natural, industrial and commercial resources of the State, and take such measures as it may deem best suited to promote the conservation and development of such resources.

It shall have charge of the work of forest maintenance, forest fire prevention, reforestation, and the protection of lands and water supplies by the preservation of forests; it shall also have the care of State forests and parks, and other recreational areas now owned or to be acquired by the State, including the lakes referred to in § 146-7.

It shall make such examination, survey and mapping of the geology, mineralogy and topography of the State, including their industrial and economic utilization, as it may consider necessary; make investigations of water supplies and water powers, prepare and maintain a general inventory of the water resources of the State, and take such measures as it may consider necessary to promote their development.

It shall have the duty of enforcing all laws relating to the conservation of marine and estuarine resources.

It shall make investigations of the existing conditions of trade, commerce and industry in the State, with the causes which may hinder or encourage their growth, and may devise and recommend such plans as may be considered best suited to promote the development of these interests.

The Board may take such other measures as it may deem advisable to obtain and make public a more complete knowledge of the State and its resources, and it is authorized to cooperate with other departments and agencies of the State in obtaining and making public such information.

It shall be the duty of the Board to arrange and classify the facts derived from the investigations made, so as to provide a general source of information in regard to the State, its advantages and resources.

The Board may acquire such real and personal property as may be found desirable and necessary for the performance of the duties and functions of the Department of Conservation and Development, and pay for same out of any funds appropriated for the Department or available unappropriated revenues of the Department, when such acquisition is approved by the Governor and Council of State. The title to any real estate acquired shall be in the name of the State of North Carolina for the use and benefit of the Department.

It shall also be the duty of the Board of Conservation and Development to supervise, guide, and control the performance by the Department of its additional duties as set forth in G.S. 113-3 (b) and to hold public hearings with regard thereto. (1925, c.122, s. 9; 1927, c. 57; 1947, c. 118; 1957, c. 753, s. 4; c. 1424, s. 2; 1965, c. 957, s. 11.)

Cross References. — As to effect of change of names of Commissioner and Division of Commercial Fisheries of the Department to Commissioner and Division of Commercial and Sports Fisheries of the Department, see § 113-318. As to Wildlife Resources Law, see § 143-237 et seq.

Editor's Note. — The 1965 amendment rewrote the fifth paragraph.

Former § 146-7, referred to in the third paragraph, and relating to certain lakes not to be sold, was repealed by Session Laws 1959, c. 683. As to present provision relating to natural lakes belonging to State, see § 146-3.

Subsection (b) of § 113-3, referred to in the last paragraph, was repealed by Session Laws 1959, c. 779, s. 3.

Session Laws 1945, c. 524, authorized the maintenance of one or more smallmouth bass fish hatcheries and sub-rearing stations.

Cited in Williams v. McSwain, 248 N.C. 13, 102 S.E.2d 464 (1958).

§ **113-8.1**: Repealed by Session Laws 1959, c. 779, s. 3.

§ **113-9. Director of Conservation and Development.**—The Governor shall appoint a suitable person as Director of Conservation and Development who shall serve under the direction and supervision of the Board and who shall have charge of the work of the Department. The Director shall serve at the pleasure of the Governor. (1925, c. 122, s. 12; 1953, c. 808, s. 1.)

§ **113-10. Duties of the Director.**—It shall be the duty of the Director, under the direction and supervision of the Board and under such rules and regulations as the Board may adopt, to make, or cause to be made, examinations and surveys of the economic and natural resources of the State and investigations of its industrial and commercial enterprises and advantages, and to perform such other duties as the Board may prescribe in carrying out the objects of the Department. (1925, c. 122, s. 13; 1953, c. 808, s. 2.)

§ **113-11. Compensation of the Director.** — The Director shall receive an annual salary to be fixed by the Governor subject to the approval of the Advisory Budget Commission. (1905, c. 542, ss. 2, 3; Rev., s. 2757; C. S., s. 6122(r); 1925, c. 122, s. 14; 1957, c. 541, s. 9.)

§ **113-12. Heads of divisions, experts and assistants.**—The Director shall appoint, subject to the approval of the Board, the heads of the divisions and such experts and assistants as may be necessary to enable him to carry on successfully the work of the Department, and may, with the approval of the Board, assign to the heads of the divisions and other appointees such duties as may be deemed appropriate. (1925, c. 122, s. 15; 1953, c. 808, s. 3.)

§ **113-13. Power to examine witnesses.** — The Board, or the Director, is authorized, in the performance of their duties, to administer oaths and to subpoena and examine witnesses. (1925, c. 122, s. 10.)

§ **113-14. Reports and publications.** — The Board shall prepare a report to be submitted by the Governor to each General Assembly showing the nature and progress of the work and the expenditures of the Department.

The Board may also cause to be prepared for publication, from time to time, reports and statements, with illustrations, maps and other descriptions, which may adequately set forth the natural and material resources of the State and its industrial and commercial developments, with a view to furnishing information to educate the people with reference to the material advantages of the State, to encourage and foster existing industries, and to present inducements for investment in new enterprises. Such reports and information shall be published and distributed as the Board may direct, at the expense of the State as other public documents. (1925, c. 122, s. 11.)

§ **113-15. Advertising of State resources and advantages.** — It is hereby declared to be the duty of the Department of Conservation and Development to map out and to carry into effect a systematic plan for the nationwide advertising of North Carolina, properly presenting, by the use of any available advertising media, the true facts concerning the State of North Carolina and all of its resources. (1937, c. 160; 1953, c. 808, s. 4.)

§ **113-15.1. Director authorized to create Division of Community Planning; powers and duties.** — (a) The Director of the Department of Conservation and Development, with the approval of the Board of Conservation and Development, is authorized to create within the Department of Conservation and Development a Division of Community Planning and to provide the necessary personnel and equipment for such division subject to the provisions of articles 1 and 2 of chapter 113 of the General Statutes.

(b) The following powers are hereby granted to the Director of the Department of Conservation and Development and may be delegated and assigned to the Administrator of Community Planning:

(1) To provide planning assistance to municipalities and counties and joint and regional planning boards established by two or more governmental units in the solution of their local planning program. Planning assistance as used in this section shall consist of making population, economic land use, traffic, parking studies, developing plans based thereon to guide public and private development and other planning work of a similar nature. Planning assistance shall also include the preparation of proposed subdivision regulations, zoning ordinances, and similar measures which may be recommended for the implementation of such plans. The Division may also undertake regional or state-wide studies which may be necessary as a basis for related studies conducted for municipalities and counties or for joint and regional planning boards. Provided, that the term planning assistance shall not be construed as including the providing of plans for specific public works.

(2) To receive and expend federal and other funds for planning assistance to municipalities and counties, and to joint and regional planning boards, to receive and expend federal and other funds which may be made available for regional and state-wide studies, and to enter into contracts with the federal government, municipalities, counties, or joint and regional planning boards with reference thereto.

(3) To provide appropriated State or other nonfederal funds, which together will constitute an amount at least equal to one half the estimated cost of the planning work for which a federal grant is requested.

(4) To perform planning assistance, either through the staff of the Division of Community Planning, or through acceptable contractual arrangements with other qualified State agencies or institutions, or with private professional organizations or individuals.

(5) To assume full responsibility for the proper execution of a planning program for which a grant of State or federal funds has been made and for carrying out the terms of a federal grant contract.

(6) To cooperate with municipal, county, joint and regional planning boards, federal planning agencies, and planning agencies of other states for the purpose of aiding and encouraging an orderly coordinated development of the State.

(7) To accept any funds which may be given or granted to the Department for planning assistance and to expend such funds in a manner and for such purposes as may be specified in the terms of the gift or grant. (1957, c. 996; 1961, c. 1214.)

§ 113-16. Cooperation with agencies of the federal government.—The Board is authorized to arrange for and accept such aid and cooperation from the several United States government bureaus and other sources as may assist in completing topographic surveys and in carrying out the other objects of the Department.

The Board is further authorized and directed to cooperate with the Federal Power Commission in carrying out the rules and regulations promulgated by that Commission; and to act in behalf of the State in carrying out any regulations that may be passed relating to water powers in this State other than those related to making and regulating rates. The provisions of this section are extended to apply to cooperation with authorized agencies of other states. (1925, c. 122, s. 18; 1929, c. 297, s. 2.)

§ **113-17. Agreements, negotiations and conferences with federal government.** — The Department of Conservation and Development is delegated as the State agency to represent North Carolina in any agreements, negotiations, or conferences with authorized agencies of adjoining or other states, or agencies of the federal government, relating to the joint administration or control over the surface or underground waters passing or flowing from one state to another: Provided, that in all matters relating to pollution of said waters the Department and the State Board of Health, acting jointly, are hereby designated as the official agency under the provisions of this section. (1929, c. 297, s. 1.)

§ **113-18. Department authorized to receive funds from Federal Power Commission.**—All sums payable to the State of North Carolina by the Treasurer of the United States of America under the provisions of section seventeen and other sections of the Federal Water Power Act shall be paid to the account of the State Department of Conservation and Development as the authorized agent of the State for receipt of said payments. Such sums shall be used by the Department of Conservation and Development in prosecuting investigations for the utilization and development of the water resources of the State. (1929, c. 288.)

§ **113-19. Cooperation with other State departments.**—The Board is authorized to cooperate with the North Carolina Utilities Commission in investigating the water powers in the State, and to furnish the Utilities Commission such information as is possible regarding the location of the water-power sites, developed water powers, and such other information as may be desired in regard to water power in the State; the Board shall also cooperate as far as possible with the Department of Labor, the State Department of Agriculture, and other departments and institutions of the State in collecting information in regard to the resources of the State and in preparing the same for publication in such manner as may best advance the welfare and improvement of the State. (1925, c. 122, s. 16; 1927, c. 57, s. 1; 1931, c. 312; 1933, c. 134, s. 8.)

§ **113-20. Cooperation with counties and municipal corporations.** —The Board is authorized to cooperate with the counties of the State in any surveys to ascertain the natural resources of the county; and with the governing bodies of cities and towns, with boards of trade and other like civic organizations, in examining and locating water supplies and in advising and recommending plans for other municipal improvements and enterprises. Such cooperation is to be conducted upon such terms as the Board may direct. (1925, c. 122, s. 17.)

§ **113-21. Cooperation of counties with State in making water resource survey.** — The board of county commissioners of any county of North Carolina is authorized and empowered, in their discretion, to cooperate with the Department of Conservation and Development or other association, organization, or corporation in making surveys of any of the natural resources of their county, and to appropriate and pay out of the funds under their control such proportional part of the cost of such survey as they may deem proper and just. (1921, c. 208; 1925, c. 122, s. 4.)

§ **113-22. Control of State forests.**—The Board and Director shall have charge of all State forests, and measures for forest fire prevention. (1925, c. 122, s. 22.)

§ **113-23. Control of Mount Mitchell Park and other State parks.** —The Board shall have the control and management of Mount Mitchell Park and of any other parks which have been or may be acquired by the State as State parks. (1925, c. 122, s. 23.)

Cross Reference.—For further provisions relating to Mount Mitchell Park, see §§ 100-11 through 100-15.

§ 113-24. Protection of waterfowl food growing in public waters.—The Director of the State Department of Conservation and Development shall have absolute control and authority over all the aquatic plant foods or other waterfowl food growing in the public waters of North Carolina. None of same shall be sold, transported or shipped from the State except by permission in writing obtained from the Director of the State Department of Conservation and Development. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) or imprisoned not less than ninety (90) days nor more than six (6) months, or both such fine and imprisonment, in the discretion of the court. (1935, c. 135; 1941, c. 205.)

§ 113-25. Notice to Department before beginning business of manufacturing products from mineral resources of State.—Every person, firm or corporation engaging in the manufacture or production of any product from any natural resources, classified as mineral products, shall before beginning such operation, or if already engaged in such business, within ninety days after March 9, 1927, notify the Department of its intention to begin or continue such business, and also notify said Department of the product or products it intends to produce.

Every person, firm or corporation now engaged or hereafter engaging in the manufacture or production of any product from any natural resources of the State classified as mineral products, shall notify the Department when such person, firm or corporation shall discontinue such manufacture or production.

Any person, firm or corporation failing to comply with the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not more than twenty-five dollars and not less than five dollars, in the discretion of the court. (1927, c. 258.)

§ 113-26: Repealed by Session Laws 1959, c. 683, s. 6.

§ 113-26.1. Bureau of Mines; mineral museum. — The Governor and the Council of State are hereby authorized, in their discretion and at such times as the development of the mineral resources and the expansion of mining operations in the State justify and make reasonably necessary, to create and establish as a part of the Department of Conservation and Development a Bureau of Mines, or a mineral museum in cooperation with the National Park Service, to be located in the western part of the State, with a view to rendering such aid and assistance to mining developments in this State as may be helpful in this expanding industry, and to allocate from the Contingency and Emergency Fund such funds as may reasonably be necessary for the establishment and operation of such Bureau of Mines or mineral museum.

Upon the creation and establishment of such Bureau of Mines or mineral museum as herein authorized, the same shall be operated under such rules and regulations as may be adopted by the Board of Conservation and Development. (1943, c. 612; 1953, c. 1104, ss. 1-3.)

§ 113-27: Repealed by Session Laws 1959, c. 779, s. 3.

§ 113-28. Reimbursement of government for expense of emergency conservation work.—When and if, upon the sale of State land or its products, the Director of Conservation and Development determines that the State has derived a direct profit as a result of work on the land sold, or on land the products of which are sold, done or to be done, under a project carried on pursuant to an act of Congress entitled, "An act for the relief of unemployment through the performance of useful public work, and for other purposes" approved March thirty-first, one thousand nine hundred and thirty-three, one half of such profit from such sale of land, or one half the proceeds of the sale of such products, or such lesser amount as may be sufficient, shall be applied to or toward reimbursing the United States Government for moneys expended by it under such act, for the work so done, to the extent and at the rate of one dollar per man per day, for the time spent in such work, but not exceeding in the aggregate three dollars per acre. The Director of Conservation and Development shall fix and determine the amount of such profit or proceeds. Such one-half part of such proceeds or profits, as the case may be, shall be retained by the Department of Conservation and Development, or paid over to it by any other authorized agency making the sale, to be so retained by such Department until the account of the United States government, with respect to such sale, becomes liquidated. Upon completion of the sale, the Department of Conservation and Development is hereby authorized to settle with the proper federal authority an account fixing the amount due the United States government and to pay over to it the amount so fixed. The unexpended remainder, if any, of such one-half part of such profit or proceeds shall then be paid over or applied by said Department of Conservation and Development as now authorized and directed by law. This section shall not be construed to authorize the sale of State lands or products, but applies only to a sale now or hereafter authorized by other provisions of law. This section is enacted to procure a continuance of the emergency conservation work within the State, under such act of Congress. (1935, c. 115.)

Article 1A.

Special Peace Officers.

§ 113-28.1. Designated employees commissioned special peace officers by Governor.— Upon application by the Director of the Department of Conservation and Development, the Governor is hereby authorized and empowered to commission as special peace officers such of the employees of the Department of Conservation and Development as the Director may designate for the purpose of enforcing the laws, rules and regulations enacted or adopted for the protection, preservation and government of State parks, lakes, reservations and other lands or waters under the control or supervision of the Department of Conservation and Development. Such employees shall receive no additional compensation for performing the duties of special peace officers under this article. (1947, c. 577.)

§ 113-28.2. Powers of arrest. — Any employee of the Department of Conservation and Development commissioned as a special peace officer shall have the right to arrest with warrant any person violating any law, rule or regulation on or relating to the State parks, lakes, reservations and other lands or waters under the control or supervision of the Department of Conservation and Development, and shall have power to pursue and arrest without warrant any person violating in his presence any law, rule or regulation on or relating to said parks, lakes, reservations and other lands or waters under the control or supervision of the Department of Conservation and Development. (1947, c. 577.)

§ 113-28.3. Bond required. — Each employee of the State Department of Conservation and Development commissioned as a special peace officer under this article shall give a bond with a good surety, payable to the State of North Carolina in a sum not less than one thousand dollars ($1,000.00), conditioned upon the faithful discharge of his duty as such peace officer. The bond shall be duly approved by and filed in the office of the Commissioner of Insurance, and copies of the same, certified by the Commissioner of Insurance, shall be received in evidence in all actions and proceedings in this State. (1947, c. 577.)

Editor's Note. — By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner."

§ **113-28.4. Oaths required.**—Before any employee of the Department of Conservation and Development commissioned as a special peace officer shall exercise any power of arrest under this article, he shall take the oaths required of public officers before an officer authorized to administer oaths. (1947, c. 577.)

SUBCHAPTER II. STATE FORESTS AND PARKS.

Article 2.

Acquisition and Control of State Forests and Parks.

§ **113-29. Policy and plan to be inaugurated by Division of Forestry.**—The Department of Conservation and Development through the Division of Forestry shall inaugurate the following policy and plan looking to the cooperation with private and public forest owners in this State insofar as funds may be available through legislative appropriation, gifts of money or land, or such cooperation with landowners and public agencies as may be available:

(1) The extension of the forest fire prevention organization to all counties in the State needing such protection.

(2) To cooperate with federal and other public agencies in the restoration of forest growth on land unwisely cleared and subsequently neglected.

(3) To furnish trained and experienced experts in forest management, to inspect private forest lands and to advise with forest landowners with a view to the general observance of recognized and practical rules of growing, cutting and marketing timber. The services of such trained experts of the Department must naturally be restricted to those landowners who agree to carry out so far as possible the recommendations of said Department.

(4) To prepare and distribute printed and other material for the use of teachers and club leaders and to provide instruction to schools and clubs and other groups of citizens in order to train the younger generation in the principles of wise use of our forest resources.

(5) To acquire small areas of suitable land in the different regions of the State on which to establish small, model forests which shall be developed and used by the said Department of Conservation and Development as State demonstration forests for experiment and demonstration in forest management. (1939, c. 317, s. 1.)

§ **113-29.1. Growing of timber on unused State lands authorized.**—The Department of Administration may allocate to the Department of Conservation and Development, for management as a State forest, any vacant and unappropriated lands, any marsh lands or swamp lands, and any other lands title to which is vested in the State or in any State agency or institution, where such lands are not being otherwise used and are not suitable for cultivation. Lands under the supervision of the Wildlife Resources Commission and designated and in use as wildlife management areas, refuges, or fishing access areas and lands used as Research Stations shall not be subject to the provisions of this section. The Department of Conservation and Development, through the Division of Forestry, shall plant timber-producing trees on all lands allocated to it for that purpose by the Department of Administration. The Director of Conservation and Development may contract with the appropriate prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such prison authorities and the Director of Conservation and Development, of prison labor for use in the planting, cutting, and removal of timber from State forests which are under the management of the Forestry Division. (1957, c. 584, s. 1.)

§ **113-30. Use of lands acquired by counties through tax foreclosures as demonstration forests.**—The boards of county commissioners of the various counties of North Carolina are herewith authorized to turn over to the said Department of Conservation and Development title to such tax delinquent lands as may have been acquired by said counties under tax sale and as in the judgment of the State Forester may be suitable for the purposes named in § 113-29, subdivision (5). (1939, c. 317, s. 2.)

§ **113-31. Procedure for acquisition of delinquent tax lands from counties.**—In the carrying out of the provisions of § 113-30, the several boards of county commissioners shall furnish forthwith on written request of the Department of Conservation and Development a complete list of all properties acquired by the county under tax sale and which have remained unredeemed for a period of two years or more. On receipt of this list the State Forester of the Department of Conservation and Development shall have the lands examined and if any one or more of these properties is in his judgment suitable for the purposes set forth in § 113-30, request shall be made through the Director of said Department to the county commissioners for the acquisition of such land by the Department at a price not to exceed the actual amount of taxes due without penalties. On receipt of this request the county commissioners shall make permanent transfer of such tract or tracts of land to the Department through fee simple deed or other legal transfer, said deed to be approved by the Attorney General of North Carolina, and shall then receive payment from the Department as above outlined. (1939, c. 317, s. 3.)

§ **113-32. Purchase of lands for use as demonstration forests.**—Where no suitable tax-delinquent lands are available and in the judgment of the Department of Conservation and Development the establishment of a demonstration forest is advisable, the Department may purchase sufficient land for the establishment of such a demonstration forest at a fair and agreed-upon price, the deed for such land to be subject to approval of the Attorney General, but nothing in §§ 113-29 to 113-33 shall allow the Department of Conservation and Development to acquire land under the right of eminent domain. (1939, c. 317, s. 4.)

§ **113-33. Forest management appropriation.** — Necessary funds for carrying out the provisions of §§ 113-29 and 113-30 to 113-33 shall be set up in the regular budget as an item entitled "forest management." (1939, c. 317, s. 5.)

§ **113-34. Power to acquire lands as State forests, parks, etc.; donations or leases by United States; leases for recreational purposes; rules governing public use.** — The Governor of the State is authorized upon recommendation of the Board of Conservation and Development to accept gifts of land to the State, the same to be held, protected, and administered by said Board as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. Such gifts must be absolute except in such cases as where the mineral interest on the land has previously been sold. The State Board of Conservation and Development shall have the power to purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, for experimental, demonstration, educational, park, and protection purposes, using for such purposes any special appropriations or funds available. The State Board of Conservation and Development shall also have the power to acquire by condemnation under the provisions of chapter forty, such areas of land in different sections of the State as may in the opinion of the Department of Conservation and Development be necessary for the purpose of establishing and/or developing State forests, State parks and other areas and developments essential to the effective operation of the State forestry and State park activities with which the Department of Conservation and Development has been or may be entrusted. Such condemnation proceedings shall be instituted and prosecuted in the name of the State of North Carolina, and any property so acquired shall be administered, developed and used for experiment and demonstration in forest management, for public recreation and for such other purposes authorized or required by law: Provided, that before any action or proceeding under this section can be exercised, the approval of the Governor and Council of State shall be obtained and filed with the clerk of the superior court in the county or counties where such property may be situate, and until such approval is obtained, the rights and powers conferred by this section shall not be exercised. The Attorney General of the State is directed to see that all deeds to the State for land mentioned in this section are properly executed before the gift is accepted or payment of the purchase money is made.

The Board of Conservation and Development is further authorized and empowered to accept as gifts to the State of North Carolina such forest and submarginal farm land acquired by said federal government as may be suitable for the purpose of creating and maintaining State-controlled forests, game refuges, public shooting grounds, State parks, State lakes, and other recreational areas, or to enter into long-time leases with the federal government for such areas and administer them with such funds as may be secured from their administration in the best interest of long-time public use, supplemented by such necessary appropriations as may be made by the General Assembly. The Department of Conservation and Development is further empowered to segregate State hunting and fishing licenses, use permits, and concessions and other proper revenue secured through the administration of such forests, game refuges, public shooting grounds, State parks, State lakes, and other recreational areas to be deposited in the State treasury to the credit of the Department to be used for the administration of these areas.

The Department of Conservation and Development, with the approval of the Governor and Council of State, is further authorized and empowered to enter into leases of lands and waters for State parks, State lakes and recreational purposes; and the State Department of Conservation and Development may construct, operate and maintain on said lands and waters suitable public service facilities and conveniences and may charge and collect reasonable fees for

(1) The erection, maintenance and use of docks, piers and such other structures as may be permitted in or on said waters under its own regulations;

(2) Fishing privileges in said waters, provided that such privileges shall be extended only to holders of bona fide North Carolina fishing licenses, and provided further that all State fishing laws and regulations are complied with.

The Department of Conservation and Development may make reasonable rules and regulations for the operation and use of boats or other craft on the surface of the said waters but shall not be authorized to charge or collect fees for such operation or use.

The Department may make reasonable rules for the regulation of the use by the public of said lands and waters and of public service facilities and conveniences constructed thereon, and said regulations shall have the force and effect of law and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars ($50.00) or imprisonment of not more than thirty (30) days.

The authority herein granted is in addition to other authority now held and exercised by the Department of Conservation and Development. (1915, c. 253, s. 1; C. S., s. 6124; 1925, c. 122, s. 22; 1935, c. 226; 1941, c. 118, s. 1; 1951, c. 443; 1953, c. 1109; 1957, c. 988, s. 2; 1965, c. 1008, s. 1.)

Local Modification.—Swain: 1951, c. 443.

Editor's Note.—The 1965 amendment deleted former subdivision (1) of the third paragraph, redesignated subdivisions (2) and (3) of that paragraph as subdivisions (1) and (2), and added the last sentence therein.

§ **113-35. State timber may be sold by Department of Conservation and Development; forest nurseries; control over parks, etc., operation of public service facilities; concessions to private concerns.**—Timber and other products of such State forest lands may be sold, cut and removed under rules and regulations of the Department of Conservation and Development. Said Department shall have authority to establish on these or other State lands under its charge forest nurseries for the growing of trees for planting on such State forest lands and to procure or acquire tree seeds for nursery for forest use. Such planting stock as is not required in the State forests may be sold at not less than cost to landowners within the State for planting purposes, but all such planting shall be done under plans approved by the Department. The Department shall make reasonable rules for the regulation of the use by the public of such and all State forests, State parks, State lakes, game refuges and public shooting grounds under its charge, which regulations, after having been posted in conspicuous places on and adjacent to such State properties and at the courthouse of the county or counties in which such properties are situated, shall have the force and effect of law and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars or by imprisonment for not exceeding thirty days.

The Department may construct and operate within the State forests, State parks, State lakes and any other areas under its charge suitable public service facilities and conveniences, and may charge and collect reasonable fees for the use of same; it may also charge and collect reasonable fees for:

(1) The erection, maintenance and use of docks, piers and such other structures as may be permitted in or on State lakes under its own regulations;

(2) Hunting privileges on State forests and fishing privileges in State forests, State parks and State lakes, provided that such privileges shall be extended only to holders of bona fide North Carolina hunting and fishing licenses, and provided further that all State game and fish laws and regulations are complied with.

The Department of Conservation and Development may make reasonable rules and regulations for the operation and use of boats or other craft on the surface of the said waters but shall not be authorized to charge or collect fees for such operation or use.

The Department may also grant to private individuals or companies concessions for operation of public service facilities for such periods and upon such conditions as the Board of Conservation and Development shall deem to be in the public interest. The Department may make reasonable rules for the regulations of the use by the public of the public service facilities and conveniences herein authorized which regulations shall have the force and effect of law, and any violation of such regulations shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars ($50.00) or by imprisonment for not exceeding thirty days. (1931, c. 111; 1947, c. 697; 1965, c. 1008, s. 2.)

Editor's Note.—The 1965 amendment deleted former subdivision (1) of the second paragraph, redesignated subdivisions (2) and (3) of that paragraph as subdivisions (1) and (2), and added the last sentence therein.

§ **113-36. Application of proceeds from sale of products.**—All money received from the sale of wood, timber, minerals, or other products from the State forests shall be paid into the State treasury and to the credit of the Board of Conservation and Development; and such money shall be expended in carrying out the purposes of this article and of forestry in general, under the direction of the Board of Conservation and Development. (1915, c. 253, s. 2; C. S., s. 6125; 1925, c. 122, s. 22.)

§ 113-37. Legislative authority necessary for payment.—Nothing in this article shall operate or be construed as authority for the payment of any money out of the State treasury for the purchase of lands or for other purposes unless by appropriation for said purpose by the General Assembly. (1915, c. 253, s. 2½; C. S., s. 6126.)

§ 113-38. Distribution of funds from sale of forest lands. — All funds paid by the National Forest Commission, by authority of act of Congress, approved May 23, 1908 (Thirty-five Stat., two hundred sixty), for the counties of Avery, Buncombe, Burke, Craven, Haywood, Henderson, Hyde, Jackson, Macon, Montgomery, Swain, Transylvania, Watauga, and Yancey, shall be paid to the proper county officers, and said funds shall, when received, be placed in the account of the general county funds: Provided, however, that in Buncombe County said funds shall be entirely for the use and benefit of the school district or districts in which said national forest lands shall be located.

All funds which may hereafter come into the hands of the State Treasurer from like sources shall be likewise distributed. (Ex. Sess. 1920, c. 6; 1921, c. 179, s. 17; C. S., s. 6126(a); 1933, c. 537, s. 1; 1939, c. 152; 1943, c. 527; 1957, c. 694; 1959, c. 245.)

§ 113-39. License fees for hunting and fishing on government-owned property unaffected.—No wording in § 113-113, or any other North Carolina statute or law, or special act, shall be construed to abrogate the vested rights of the State of North Carolina to collect fees for license for hunting and fishing on any government-owned land or in any government-owned stream in North Carolina including the license for county, State or nonresident hunters or fishermen; or upon any lands or in any streams hereafter acquired by the federal government within the boundaries of the State of North Carolina. The lands and streams within the boundaries of the Great Smoky Mountains National Park to be excepted from this section. (1933, c. 537, s. 2.)

§ 113-40. Donations of property for forestry or park purposes; agreements with federal government or agencies for acquisition.—The Department of Conservation and Development is hereby authorized and empowered to accept gifts, donations or contributions of land suitable for forestry or park purposes and to enter into agreements with the federal government or other agencies for acquiring by lease, purchase or otherwise such lands as in the judgment of the Department are desirable for State forests or State parks. (1935, c. 430, s. 1.)

§ 113-41. Expenditure of funds for development, etc.; disposition of products from lands; rules and regulations. — When lands are acquired or leased under § 113-40, the Department is hereby authorized to make expenditures from any funds not otherwise obligated, for the management, development and utilization of such areas; to sell or otherwise dispose of products from such lands, and to make such rules and regulations as may be necessary to carry out the purposes of §§ 113-40 to 113-44. (1935, c. 430, s. 2.)

§ 113-42. Disposition of revenues received from lands acquired.—All revenues derived from lands now owned or later acquired under the provisions of §§ 113-40 to 113-44 shall be set aside for the use of the Department in acquisition, management, development and use of such lands until all obligations incurred have been paid in full. Thereafter, fifty percent of all net profits accruing from the administration of such lands shall be applicable for such purposes as the General Assembly may prescribe, and fifty percent shall be paid into the school fund to be used in the county or counties in which lands are located. (1935, c. 430, s. 3.)

§ **113-43. State not obligated for debts created hereunder.**—Obligations for the acquisition of land incurred by the Department under the authority of §§ 113-40 to 113-44 shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the State. (1935, c. 430, s. 4.)

§ **113-44. Disposition of lands acquired.** — The Department shall have full power and authority to sell, exchange or lease lands under its jurisdiction when in its judgment it is advantageous to the State to do so in the highest orderly development and management of State forests and State parks: Provided, however, said sale, lease or exchange shall not be contrary to the terms of any contract which it has entered into. (1935, c. 430, s. 5.)

Article 3.

Private Lands Designated as State Forests.

§ **113-45. Governor may designate State forests.** — The Governor of the State, upon the written application of any owner or owners of wooded lands situated in North Carolina above contour line two thousand feet, may at his discretion declare the lands of such owner or owners, or such parts thereof as he may deem advisable, a "State forest of North Carolina." (1909, c. 89, s. 1; C. S., s. 6127.)

§ **113-46. Publication of declaration.**—The declaration of the Governor shall be published, at the expense of the applicant, in three consecutive issues of any newspaper published in the county or counties wherein the lands declared a State forest reserve are situated, if there be one; if no paper is published in the county or counties, then in a paper published in an adjoining county; and after such publication the said lands shall be a State forest of North Carolina for the term of thirty years. (1909, c. 89, s. 2; C. S., s. 6128.)

§ **113-47. Duty of the landowners.** — The owner or owners, when making such written application, shall agree in writing to treat in a conservative manner the proposed State forest described in the application, such manner to be in accordance with a working plan approved by the Department of Conservation and Development; and the owner or owners of such proposed State forest, when making such application, shall agree to pay annually into the school fund of the county wherein such proposed State forest or a part thereof is situated one-half cent for every acre of such proposed State forest situated within the county; and if the owner or owners thereafter shall fail to make such annual payment, then the declaration of the Governor establishing the said State forest shall be null and void to all intents and purposes. (1909, c. 89, s. 3; C. S., s. 6129; 1925, c. 122, s. 22.)

§ **113-48. Forest rangers appointed.** — The forester of the Department of Conservation and Development may appoint, with the approval of the Board of Conservation and Development, as forest rangers such a man or men over twenty-one years of age as may be recommended for appointment by the owner or owners of such State forest. Such forest rangers are to receive no compensation other than that which the owner or owners of the State forest may pay to them. (1909, c. 89, s. 4; C. S., s. 6130; 1951, c. 575; 1955, c. 910, s. 1.)

§ **113-49. Powers of State forest rangers.** — The State forest rangers may make arrest on sight, without warrant, for any criminal offense, as provided in the chapter on Criminal Law for setting fire to woods, for campfires, for hunting on lands without permission of the owner, for malicious injury to real property, for cutting or removing timber from the land of another, for trespass on land after being forbidden, or for other crime relating to real estate committed within the State forest. They shall safeguard against trespass, and notably against fire, in the State forest for which they have been appointed; and, as far as the enforcement of the provisions of this article is concerned, the State forest rangers shall have all the powers, privileges, and protection otherwise had by sheriffs under any law now in force. (1909, c. 89, s. 5; C. S., s. 6131; 1951, c. 575.)

Editor's Note. — For article on the law of arrest in North Carolina, see 15 N.C.L. Rev. 101.

Stated in Alexander v. Lindsey, 230 N.C. 663, 55 S.E.2d 470 (1949).

§ **113-50. Fines imposed.**—The minimum fine for any offense mentioned in the preceding section [§ 113-49] committed within any State forest shall be fifty dollars if within the jurisdiction of the superior court, and twenty-five dollars if within the jurisdiction of a justice of the peace. (1909, c. 89, s. 6; C. S., s. 6132.)

Article 4.

Protection and Development of Forests; Fire Control.

§ **113-51. Board of Conservation and Development.** — The State Board of Conservation and Development may take such action as it may deem necessary to provide for the prevention and control of forest fires in any and all parts of this State, and it is hereby authorized to enter into an agreement with the Secretary of Agriculture of the United States for the protection of the forested watersheds of streams in this State. (1915, c. 243, s. 1; C. S., s. 6133; 1925, c. 122, s. 22.)

§ **113-52. State Forester and forest rangers.**—The forester of the Department of Conservation and Development, who shall be called State Forester, and shall be ex officio State forest ranger, may appoint, with the approval of the Board of Conservation and Development, one county forest ranger and one or more deputy forest rangers in each county of the State in which after careful investigation the amount of forest land and the risks from forest fires shall, in his judgment, warrant the establishment of a forest fire organization. (1915, c. 243, s. 2; C. S., s. 6134; 1925, c. 106, s. 1; c. 122, s. 22; 1927, c. 150, s. 1; 1935, c. 178, s. 1; 1951, c. 575.)

§ **113-53. Duties of State Forester.** — The State Forester, as the State forest ranger, shall have supervision of forest rangers, shall instruct them in their duties, issue such regulations and instructions to all forest rangers as he may deem necessary for the purposes of this article, and cause violations of the laws regarding forest fires to be prosecuted. (1915, c. 243, s. 3; C. S., s. 6135; 1925, c. 106, s. 1; 1927, c. 150, s. 2; 1951, c. 575.)

§ **113-54. Duties of forest rangers; payment of expenses by State and counties.**—Forest rangers shall have charge of measures for controlling forest fires, protection of forests from pests and diseases, and the development and improvement of the forests for maximum production of forest products; shall make arrests for violation of forest laws; shall post along highways and in other conspicuous places copies of the forest fire laws and warnings against fires, which shall be supplied by the State Forester; shall patrol and man lookout towers and other points during dry and dangerous seasons under the direction of the State Forester, and shall perform such other acts and duties as shall be considered necessary by the State Forester for the purposes set out in articles 4, 4A, and 6A of this chapter in the protection, development and improvement of the forested area of each of the counties within the State. No county may be held liable for any part of the expenses thus incurred unless specifically authorized by the board of county commissioners under prior written agreement with the State Forester; appropriations for meeting the county's share of such expenses so authorized by the board of county commissioners shall be provided annually in the county budget. For each county in which financial participation by the county is authorized, the State Forester shall keep or cause to be kept an itemized account of all expenses thus incurred and shall send such accounts periodically to the board of county commissioners of said county; upon approval by the board of the correctness of such accounts, the county commissioners shall issue or cause to be issued a warrant on the county treasury for the payment of the county's share of such expenditures, said payment to be made within one (1) month after receipt of such statement from the State Forester. Appropriations made by a county for the purposes set out in articles 4, 4A and 6A of this chapter in the cooperative forest protection, development and improvement work are not to replace State and federal funds which may be available to the State Forester for the work in said county, but are to serve as a supplement thereto. The funds appropriated to the Department of Conservation and Development in the biennial Budget Appropriation Act for the purposes set out in articles 4, 4A, and 6A of this chapter shall not be expended in a county unless that county shall contribute at least twenty-five percent (25%) of the total cost of the forestry program. (1915, c. 243, s. 4; C. S., s. 6136; 1925, c. 106, s. 1; 1927, c. 150, s. 3; 1935, c. 178, s. 2; 1943, c. 660; 1947, c. 56, s. 1; 1951, c. 575; 1961, c. 833, s. 17; 1963, c. 312, s. 1.)

Local Modification.—Cumberland: 1943, c. 660.

Editor's Note.—The 1963 amendment rewrote this section.

§ 113-55. Powers of forest rangers to prevent and extinguish fires.—Forest rangers shall prevent and extinguish forest fires and enforce all statutes of this State now in force or that hereafter may be enacted for the protection of forests and woodlands from fire, and they shall have control and direction of all persons and apparatus while engaged in extinguishing forest fires. Any forest ranger may arrest, without a warrant, any person or persons committing a crime in his presence, and bring such person or persons forthwith before a justice of the peace or other officer having jurisdiction, who shall proceed without delay to hear, try, and determine the matter. During a season of drought the State Forester may establish a fire patrol in any district, and in case of fire in or threatening any forest or woodland the forest ranger shall attend forthwith and use all necessary means to confine and extinguish such fire. The forest ranger or his deputies may summon any male resident between the ages of eighteen and forty-five years to assist in extinguishing fires, and may require the use of horses and other property needed for such purpose; any person so summoned, and who is physically able, who refuses or neglects to assist or to allow the use of horses, wagons, or other material required, shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not less than five dollars nor more than fifty dollars. No action for trespass shall lie against any forest ranger or person summoned by him for crossing or working upon lands of another in connection with his duties as forest ranger. (1915, c. 243, s. 6; C. S., s. 6137; 1925, c. 106, ss. 1, 2; c. 240; 1927, c. 150, s. 4; 1951, c. 575; 1963, c. 312, s. 2.)

Editor's Note. — The 1963 amendment substituted "committing a crime in his presence" for "taken by him in the act of violating any of the laws for the protection of forests and woodlands" in the second sentence.

Workmen's Compensation Act Applicable to Person Appointed by Ranger to Assist.—A forest ranger of a county is given authority by this section to appoint persons between certain ages to assist him in fighting forest fires with pain of penalty upon refusal, and a person so appointed is entitled to receive a small hourly compensation for the services so rendered, and one so appointed is an employee of the State within the meaning of the Workmen's Compensation Act, and is entitled to compensation thereunder for an injury received in the course of and arising out of his duties imposed by such appointment. Moore v. State, 200 N.C. 300, 156 S.E. 806 (1931).

Cited in Tomlinson v. Norwood, 208 N.C. 716, 182 S.E. 659 (1935).

§ 113-56. Compensation of forest rangers. — Forest rangers shall receive compensation from the Board of Conservation and Development at a reasonable rate to be fixed by said Board for the time actually engaged in the performance of their duties; and reasonable expenses for equipment, transportation, or food supplies incurred in the performance of their duties, according to an itemized statement to be rendered the State Forester every month, and approved by him. Forest rangers shall render to the State Forester a statement of the services rendered by the men employed by them or their deputy rangers, as provided in this article, within one month of the date of service, which bill shall show in detail the amount and character of the service performed, the exact duration thereof, the name of each person employed, and any other information required by the State Forester. If said bill be duly approved by the State Forester, it shall be paid by direction of the Board of Conservation and Development out of any funds provided for that purpose. (1915, c. 243, s. 7; C. S., s. 6138; 1924, c. 60; 1925, c. 106, ss. 1, 3; c. 122, s. 22; 1947, c. 56, s. 2; 1951, c. 575; 1963, c. 312, s. 3.)

Editor's Note. — The 1963 amendment substituted "in the performance of their duties" for "in fighting or extinguishing any fire" in the first sentence.

§113-57. Woodland defined.—For the purposes of this article, woodland is taken to include all forest areas, both timber and cut-over land, and all second-growth stands on areas that have at one time been cultivated. (1915, c. 243, s. 11; C. S., s. 6139.)

§ 113-58. Misdemeanor to destroy posted forestry notice. — Any person who shall maliciously or wilfully destroy, deface, remove, or disfigure any sign, poster, or warning notice, posted by order of the State Forester, under the provisions of this article, or any other act which may be passed for the purpose of protecting and developing the forests in this State, shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than ten dollars ($10.00) nor more than fifty dollars ($50.00), or imprisoned not exceeding thirty (30) days. (1915, c. 243, s. 5; C. S., s. 6140; 1963, c. 312, s. 4.)

Editor's Note.—The 1963 amendment changed the words "protecting the forest in this State from fire" to read "protecting and developing the forests in this State."

§ 113-59. Cooperation between counties and State in forest protection and development.—The board of county commissioners of any county is hereby authorized and empowered to cooperate with the Department of Conservation and Development in the protection, reforestation, and promotion of forest management of their own forests within their respective counties, and to appropriate and pay out of the funds under their control such amount as is provided in § 113-54. (1921, c. 26; C. S., s. 6140(a); 1925, c. 122, s. 22; 1945, c. 635; 1963, c. 312, s. 5.)

Editor's Note. — The 1963 amendment substituted "is" for "are" near the beginning of this section. It also deleted the words "from fire of the" formerly appearing near the middle of the section and inserted in lieu thereof the words "reforestation, and promotion of forest management of their own."

§ 113-60. Instructions on forest preservation and development.—It shall be the duty of all district, county, township rangers, and all deputy rangers provided for in this chapter to distribute in all of the public schools and high schools of the county in which they are serving as such fire rangers all such tracts, books, periodicals and other literature that may, from time to time, be sent out to such rangers by the State and federal forestry agencies touching or dealing with forest preservation, development, and forest management.

It shall be the duty of the various rangers herein mentioned under the direction of the State Forrester, and the duty of the teachers of the various schools, both public and high schools, to keep posted at some conspicuous place in the various classrooms of the school buildings such appropriate bulletins and posters as may be sent out from the forestry agencies herein named for that purpose and keep the same constantly before their pupils; and said teachers and rangers shall prepare lectures or talks to be made to the pupils of the various schools on the subject of forest fires, their origin and their destructive effect on the plant life and tree life of the forests of the State, the development and scientific management of the forests of the State, and shall be prepared to give practical instruction to their pupils from time to time and as often as they shall find it possible so to do. (1925, c. 61, s. 3; 1951, c. 575; 1963, c. 312, s. 6.)

Editor's Note. — The 1963 amendment substituted "rangers" for "wardens" near the beginning of the first paragraph, deleted the words "fires and forest" formerly appearing before "preservation" and added "development, and forest management." The 1963 amendment also inserted near the end of the second paragraph the words "the development and scientific management of the forests of the State."

§ **113-60.1. Authority of Governor to close forests and woodlands to hunting, fishing and trapping.**—During periods of protracted drought or when other hazardous fire conditions threaten forest and water resources and appear to require extraordinary precautions, the Governor of the State, upon the joint recommendation of the Director of the Department of Conservation and Development and the Executive Director of the North Carolina Wildlife Resources Commission, may by official proclamation:

(1) Close any or all of the woodlands and inland waters of the State to hunting, fishing and trapping for the period of the emergency.

(2) Forbid for the period of the emergency the building of campfires and the burning of brush, grass or other debris within 500 feet of any woodland in any county, counties, or parts thereof.

(3) Close for the period of the emergency any or all of the woodlands of the State to such other persons and activities as he deems proper under the circumstances, except to the owners or tenants of such property and their agents and employees, or persons holding written permission from any owner or his recognized agent to enter thereon for any lawful purpose other than hunting, fishing or trapping. (1953, c. 305.)

§ **113-60.2. Publication of proclamation; annulment thereof.**—Such proclamation shall become effective twenty-four (24) hours after certified time of issue, and shall be published in such newspapers and posted in such places and in such manner as the Governor may direct. It shall be annulled in the same manner by another proclamation by the Governor when he is satisfied, upon joint recommendation of the Director of the Department of Conservation and Development and the Executive Director of the North Carolina Wildlife Resources Commission, that the period of the emergency has passed. (1953, c. 305.)

§ **113-60.3. Violation of proclamation a misdemeanor.**—Any person, firm or corporation who enters upon any woodlands or inland waters of the State for the purpose of hunting, fishing or trapping, or who builds a campfire or burns brush, grass or other debris within 500 feet of any woodland, after a proclamation has been issued by the Governor forbidding such activities, or who violates any other provisions of the Governor's proclamation with regard to permissible activities in closed woodlands shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined or imprisoned in the discretion of the court. (1953, c. 305.)

Article 4A.

Protection of Forest against Insect Infection and Disease.

§ **113-60.4. Purpose and intent.**—The purpose of this article is to place within the Department of Conservation and Development, Division of Forestry, the authority and responsibility for investigating insect infestations and disease infections which affect stands of forest trees, the devising of control measures for interested landowners and others, and taking measures to control, suppress, or eradicate outbreaks of forest insect pests and tree diseases. (1953, c. 910.)

§ **113-60.5. Authority of the Department of Conservation and Development.**—The authority and responsibility for carrying out the purpose, intent and provisions of this article are hereby delegated to the Department of Conservation and Development, Division of Forestry. The administration of the provisions of this article, shall be by the State Forester, under the general supervision of the Director of the Department of Conservation and Development. The provisions of this article shall not abrogate or change any power or authority as may be vested in the North Carolina Department of Agriculture under existing statutes. (1953, c. 910.)

§ **113-60.6. Definitions.**—As used in this article, unless the context clearly requires otherwise:

(1) "Control zone" means an area of potential or actual infestation or infection, boundaries of which are fixed and clearly described in a manner to definitely identify the zone.
(2) "Forest land" means land on which forest trees occur.
(3) "Forest trees" means only those trees which are a part and constitute a stand of potential immature or mature commercial timber trees, provided that the term "forest trees" shall be deemed to include shade trees of any species around houses, along highways, and within cities and towns, if the same constitute insect and disease menaces to nearby timber trees or timber stands.
(4) "Infection" means attack by any disease affecting forest trees which is declared by the State Forester to be dangerously injurious thereto.
(5) "Infestation" means attack by means of any insect, which is by the State Forester declared to be dangerously injurious to forest trees. (1953, c. 910.)

§ **113-60.7. Action against insects and diseases.**—Whenever the State Forester, or his agent, determines that there exists an infestation of forest insect pests or an infection of forest tree diseases, injurious or potential injurious to the timber or forest trees within the State of North Carolina, and that said infestation or infection is of such a character as to be a menace to the timber or forest growth of the State, the State Forester shall declare the existence of a zone of infestation or infection and shall declare and fix boundaries so as to definitely describe and indentify said zone of infestation or infection, and the State Forester, or his agent, shall give notice in writing by mail or otherwise to each forest landowner within the designated control zone advising him of the nature of the infestation or infection, the recommended control measures, and offer him technical advice on methods of carrying out controls. (1953, c. 910.)

§ **113-60.8. Authority of State Forester and his agents to go upon private land within control zones.**—The State Forester or his agents shall have the power to go upon the land within any zone of infestation or infection and take measures to control, suppress or eradicate the insect, infestation or disease infection. If any person refuses to allow the State Forester or his agents to go upon his land, or if any person refuses to adopt adequate means to control or eradicate the insect, infestation or disease infection, the State Forester may apply to the superior court of the county in which the land is located for an injunction or other appropriate remedy to restrain the landowner from interfering with the State Forester or his agents in entering the control zone and adopting measures to control, suppress or eradicate the insect infestation or disease infection, provided the cost of court or control thereof shall not be a liability against the forest landowner nor constitute a lien upon the real property of such infested area. (1953, c. 910.)

§ **113-60.9. Cooperative agreements.**—In order to more effectively carry out the purposes of this article, the Department of Conservation and Development is hereby authorized to enter into cooperative agreements with the federal government and other public and private agencies, and with the owners of forest land. (1953, c. 910.)

§ **113-60.10. Annulment of control zone.**—Whenever the State Forester determines that the forest insect or disease control work within a designated control zone is no longer necessary or feasible, then the State Forester shall declare the zone of infestation or infection no longer pertinent to the purposes of this article and such zone will then no longer be recognized. (1953, c. 910.)

Article 4B.

Southeastern Interstate Forest Fire Protection Compact.

§ **113-60.11. Execution of compact authorized; terms of compact.**—The legislature on behalf of this State is hereby authorized to execute a compact, in substantially the following form, with any one or more of the States of Alabama, Florida, Georgia, Kentucky, Mississippi, South Carolina, Tennessee, Virginia, and West Virginia, and the legislature hereby signifies in advance its approval and ratification of such compact:

Southeastern Interstate Forest Fire Protection Compact

Article I.

The purpose of this compact is to promote effective prevention and control of forest fires in the Southeastern region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire fighting services by the member states, by providing for mutual aid in fighting forest fires among the compacting states of the region and with states which are party to other regional forest fire protection compacts or agreements, and for more adequate forest protection.

Article II.

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, which are contiguous have ratified it and Congress has given consent thereto. Any state not mentioned in this Article which is contiguous with any member state may become a party to his compact, subject to approval by the legislature of each of the member states.

Article III.

In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

The compact administrators of the member states shall coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact.

There shall be established an advisory committee of legislators, forestry commission representatives, and forestry or forest products industries representatives which shall meet from time to time with the compact administrators. Each member state shall name one member of the Senate and one member of the House of

Representatives who shall be designated by that state's commission on interstate cooperation, or if said commission cannot constitutionally designate the said members, they shall be designated in accordance with laws of that state; and the Governor of each member state shall appoint two representatives, one of whom shall be associated with forestry or forest products industries to comprise the membership of the advisory committee. Action shall be taken by a majority of the compacting states, and each state shall be entitled to one vote.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.

It shall be the duty of each member state to formulate and put in effect a forest fire plan for that state and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

Article IV.

Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

Article V.

Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, on account of the maintenance, or use of any equipment or supplies in connection therewith: Provided, that nothing herein shall be construed as relieving any person from liability for his own negligent act or omission, or as imposing liability for such negligent act or omission upon any state.

All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and subsistence of employees and maintenance of equipment incurred in connection with such request: Provided, that nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such service to the receiving member state without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employes sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

For the purposes of this compact the term employee shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this Article, in accordance with the laws of the member states.

Article VI.

Ratification of this compact shall not be construed to affect any existing statute so as to authorize or permit curtailment or diminution of the forest fire fighting forces, equipment, services or facilities of any member state.

Nothing in this compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.

Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between any federal agency and a member state or states.

Article VII.

The compact administrators may request the United States Forest Service to act as a research and coordinating agency of the Southeastern Interstate Forest Fire Protection Compact in cooperation with the appropriate agencies in each state, and the United States Forest Service may accept responsibility for preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of any federal agency engaged in forest fire prevention and control may attend meetings of the compact administrators.

Article VIII.

The provisions of Articles IV and V of this compact which relate to mutual aid in combating, controlling or preventing forest fires shall be operative as between any state party to this compact and any other state which is party to a regional forest fire protection compact in another region: Provided, that the legislature of such other state shall have given its assent to such mutual aid provisions of this compact.

Article IX.

The compact shall continue in force and remain binding on each state ratifying it until the legislature or the Governor of such state, as the laws of such state shall provide, takes action to withdraw therefrom. Such action shall not be effective until six months after notice thereof has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the compact. (1955, c. 803, s. 1.)

§ **113-60.12. When compact to become effective; authority of Governor.**—When the legislature shall have executed said compact on behalf of this State and shall have caused a verified copy thereof to be filed with the State Secretary, and when said compact shall have been ratified by one or more of the states named in § 113-60.11, then said compact shall become operative and effective as between this State and such other state or states. The Governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents as between this State and any other state ratifying said compact. (1955, c. 803, s. 2.)

§ **113-60.13. Assent of legislature to mutual aid provisions of other compacts.**—The legislature of this State hereby gives its assent to the mutual aid provisions of Articles IV and V of the South Central Interstate Forest Fire Protection Compact in accordance with Article VIII of that compact relating to inter-regional mutual aid; and the legislature of this State also hereby gives its assent to the mutual aid provisions of Articles IV and V of the Middle Atlantic Interstate Forest Fire Protection Compact in accordance with Article VIII of that compact relating to inter-regional mutual aid. (1955, c. 803, s. 3.)

§ 113-60.14. Compact administrator; North Carolina members of advisory committee.—The State Forester is hereby designated as compact administrator for this State and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

At some time before the adjournment of each regular session of the General Assembly, the Governor shall choose one person from the membership of the House of Representatives, and shall choose one person from the membership of the Senate, who shall serve on the advisory committee of the Southeastern Interstate Forest Fire Protection Compact as provided for in Article III of said compact. At the time of the selection of the House and Senate members of such advisory committee, the Governor shall choose one alternate member from the House of Representatives and one from the Senate who shall serve on such advisory committee in case of the death, absence or disability of the regular members so chosen. (1955, c. 803, s. 4.)

Article 5.

Corporations for Protection and Development of Forests.

§ 113-61. Private limited dividend corporations may be formed.—Three or more persons, who associate themselves by an agreement in writing for the purpose, may become a private limited dividend corporation to finance and carry out projects for the protection and development of forests and for such other related purposes as the Director of the Department of Conservation and Development shall approve, subject to all the duties, restrictions and liabilities, and possessing all the rights, powers, and privileges, of corporations organized under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this article. (1933, c. 178, s. 1.)

Cross Reference. — As to corporations generally, see § 55-1 et seq.

§ 113-62. Manner of organizing.—A corporation formed under this article shall be organized and incorporated in the manner provided for organization of corporations under the general corporation laws of the State of North Carolina, except where such provisions are in conflict with this article. The certificate of organization of any such corporation shall contain a statement that it is organized under the provisions of this article and that it consents to be and shall be at all times subject to the rules, regulations and supervision of the Director of the Department of Conservation and Development, and shall set forth as or among its purposes the protection and development of forests and the purchase, acquisition, sale, conveyance and other dealing in the same and the products therefrom, subject to the rules and regulations from time to time imposed by the Director of the Department of Conservation and Development. (1933, c. 178, s. 2.)

§ 113-63. Directors.—There shall not be less than three directors, one of whom shall always be a person designated by the Director of the Department of Conservation and Development, which one need not be a stockholder. (1933, c. 178, s. 3.)

§ 113-64. Duties of supervision by Director of Department of Conservation and Development.—Corporations formed under this article shall be regulated by the Director of the Department of Conservation and Development in the manner provided in this article. Traveling and other expenses incurred by him in the discharge of the duties imposed upon him by this article shall be charged to, and paid by, the particular corporation or corporations on account of which such expenses are incurred. His general expenses incurred in the discharge of such duties, which cannot be fairly charged to any particular corporation or corporations, shall be charged to and paid by, all the corporations then organized and existing under this article pro rata according to their respective stock capitalizations. The Director of the Department of Conservation and Development shall:

(1) From time to time, amend, and repeal rules and regulations for carrying into effect the provisions of this article and for the protection and development of forests subject to its jurisdiction.

(2) Order all corporations organized under this article to do such acts as may be necessary to comply with the provisions of law and the rules and regulations adopted by the Director of the Department of Conservation and Development, or to refrain from doing any acts in violation thereof.

(3) Keep informed as to the general condition of all such corporations, their capitalization and the manner in which their property is permitted, operated or managed with respect to their compliance with all provisions of law and orders of the Director of the Department of Conservation and Development.

(4) Require every such corporation to file with the Director of the Department of Conservation and Development annual reports and, if the Director of the Department of Conservation and Development shall consider it advisable, other periodic and special reports, setting forth such information as to its affairs as the Director of the Department of Conservation and Development may require. (1933, c. 178, s. 4.)

§ **113-65. Powers of Director.**—The Director of the Department of Conservation and Development may:

(1) Examine at any time all books, contracts, records, documents and papers of any such corporation.

(2) In his discretion prescribe uniform methods and forms of keeping accounts, records and books to be observed by such corporation, and prescribe by order accounts in which particular outlays and receipts are to be entered, charged or credited. The Director of the Department of Conservation and Development shall not, however, have authority to require any revaluation of the real property or other fixed assets of such corporations, but he shall allow proper charges for the depletion of timber due to cutting or destruction.

(3) Enforce the provisions of this article and his orders, rules and regulations thereunder by filing a petition for a writ of mandamus or application for an injunction in the superior court of the county in which the respondent corporation has its principal place of business. The final judgment in any such proceeding shall either dismiss the proceeding or direct that a writ of mandamus or an injunction, or both, issue as prayed for in the petition or in such modified or other form as the court may determine will afford appropriate relief. (1933, c. 178, s. 5.)

§ **113-66. Provision for appeal by corporations to Governor.**—If any corporation organized under this article is dissatisfied with or aggrieved at any regulation, rule or order imposed upon it by the Director of the Department of Conservation and Development, or any valuation or appraisal of any of its property made by the Director of the Department of Conservation and Development, or any failure of or refusal by the Director of the Department of Conservation and Development to approve of or consent to any action which it can take only with such approval or consent, it may appeal to the Governor by filing with him a claim of appeal upon which the decision of the Governor shall be final. Such determination, if other than a dismissal of the appeal, shall be set forth by the Governor in a written mandate to the Director of the Department of Conservation and Development, who shall abide thereby and take such action as the same may direct. (1933, c. 178, s. 6.)

§ **113-67. Limitations as to dividends.**—The shares of stock of corporations organized under this article shall have a par value and, except as provided in § 113-69 in respect to distributions in kind upon dissolution, no dividend shall be paid thereon at a rate in excess of six per centum per annum on stock having a preference as to dividends, or eight per centum per annum on stock not having a preference as to dividends, except that any such dividends may be cumulative without interest. (1933, c. 178, s. 7.)

§ **113-68. Issuance of securities restricted.**—No such corporation shall issue stock, bonds or other securities except for money, timberlands, or interests therein, located in the State of North Carolina or other property, actually received, or services rendered, for its use and its lawful purposes. Timberlands, or interests therein, and other property or services so accepted therefor, shall be upon a valuation approved by the Director of the Department of Conservation and Development. (1933, c. 178, s. 8.)

§ **113-69. Limitation on bounties to stockholders.**—Stockholders shall at no time receive or accept from any such corporation in repayment of their investment in its stock any sums in excess of the par value of the stock together with cumulative dividends at the rate set forth in § 113-67 except that nothing in this section contained shall be construed to prohibit the distribution of the assets of such corporation in kind to its stock holders upon dissolution thereof. (1933, c. 178, s. 9.)

§ **113-70. Earnings above dividend requirements payable to State.**—Any earnings of such corporation in excess of the amounts necessary to pay dividends to stockholders at the rate set forth in § 113-67 shall be paid over to the State of North Carolina prior to the dissolution of such corporation. Net income or net losses (determined in such manner as the Director of the Department of Conservation and Development shall consider properly to show such income or losses) from the sale of the capital assets of such corporation, whether such sale be upon dissolution or otherwise, shall be considered in determining the earnings of such corporation for the purposes of this section. In determining such earnings unrealized appreciation or depreciation of real estate or other fixed assets shall not be considered. (1933, c. 178, s. 10.)

§ **113-71. Dissolution of corporation.**—Any such corporation may be dissolved at any time in the manner provided by and under the provisions of the general corporation laws of the State of North Carolina, except that the court shall dismiss any petition for dissolution of any such corporation filed within twenty years of the date of its organization unless the same is accompanied by a certificate of the Director of the Department of Conservation and Development consenting to such dissolution. (1933, c. 178, s. 11.)

§ **113-72. Cutting and sale of timber.**—Any such corporation may cut and sell the timber on its lands or permit the cutting thereof, but all such cuttings shall be in accordance with the regulations, restrictions and limitations imposed by the Director of the Department of Conservation and Development, who shall impose such regulations, restrictions and limitations with respect thereto as may reasonably conform to the accepted custom and usage of good forestry and forest economy, taking into consideration the situation, nature and condition of the tract so cut or to be cut, and the financial needs of such corporation from time to time. (1933, c. 178, s. 12.)

§ **113-73. Corporation may not sell or convey without consent of Director, or pay higher interest rate than 6%.**—No such corporation shall:

(1) Sell, assign or convey any real property owned by it or any right, title or interest therein, except upon notice to the Director of the Department

of Conservation and Development of the terms of such sale, transfer or assignment, and unless the Director of the Department of Conservation and Development shall consent thereto, and if the Director of the Department of Conservation and Development shall require it, unless the purchaser thereof shall agree that such real estate shall remain subject to the regulations and supervision of the Director of the Department of Conservation and Development for such period as the latter may require;

(2) Pay interest returns on its mortgage indebtedness at a higher rate than six per centum per annum without the consent of the Director of the Department of Conservation and Development;

(3) Mortgage any real property without first having obtained the consent of the Director of the Department of Conservation and Development. (1933, c. 178, s. 13.)

§ **113-74. Power to borrow money limited.**— Any such corporation formed under this article may, subject to the approval of the Director of the Department of Conservation and Development, borrow funds and secure their payment thereof by note or notes and mortgage or by the issue of bonds under a trust indenture. The notes or bonds so issued and secured and the mortgage or trust indenture relating thereto may contain such clauses and provisions as shall be approved by the Director of the Department of Conservation and Development, including the right to enter into possession in case of default; but the operations of the mortgagee or receiver entering in such event or of the purchaser of the property upon foreclosure shall be subject to the regulations of the Director of the Department of Conservation and Development for such period as the mortgage or trust indenture may specify. (1933, c. 178, s. 14.)

§ **113-75. Director to approve development of forests.**—No project for the protection and development of forests proposed by any such corporation shall be undertaken without the approval of the Director of the Department of Conservation and Development, and such approval shall not be given unless:

(1) The Director of the Department of Conservation and Development shall have received a statement duly executed and acknowledged on behalf of the corporation proposing such project, in such adequate detail as the Director of the Department of Conservation and Development shall require of the activities to be included in the project, such statement to set forth the proposals as to

  a. Fire prevention and protection,
  b. Protection against insects and tree diseases,
  c. Protection against damage by livestock and game,
  d. Means, methods and rate of, and restrictions upon, cutting and other utilization of the forests, and
  e. Planting and spacing of trees.

(2) There shall be submitted to the Director of the Department of Conservation and Development a financial plan satisfactory to him setting forth in detail the amount of money needed to carry out the entire project, and how such sums are to be allocated, with adequate assurances to the Director of the Department of Conservation and Development as to where such funds are to be secured.

(3) The Director of the Department of Conservation and Development shall be satisfied that the project gives reasonable assurance of the operation of the forests involved on a sustained yield basis except insofar as the Director of the Department of Conservation and Development shall consider the same impracticable.

(4) The corporation proposing such project shall agree that the project shall at all times be subject to the supervision and inspection of the Director

of the Department of Conservation and Development, and that it will at all times comply with such rules and regulations concerning the project as the Director of the Department of Conservation and Development shall from time to time impose. (1933, c. 178, s. 15.)

§ **113-76. Application of corporate income.**—The gross annual income of any such corporation, whether received from sales of timber, timber operations, stumpage permits or other sources, shall be applied as follows: First, to the payment of all fixed charges, and all operating and maintenance charges and expenses including taxes, assessments, insurance, amortization charges in amounts approved by the Director of the Department of Conservation and Development to amortize mortgage or other indebtedness and reserves essential to operation; second, to surplus, and/or to the payment of dividends not exceeding the maximum fixed by this article; third, the balance, if any, in reduction of debts. (1933, c. 178, s. 16.)

§ **113-77. Reorganization of corporations.**—Reorganization of corporations organized under this article shall be subject to the supervision of the Director of the Department of Conservation and Development and no such reorganization shall be had without the authorization of the Director of the Department of Conservation and Development. (1933, c. 178, s. 17.)

ARTICLE 6.

Cooperation for Development of Federal Parks, Parkways and Forests.

§§ **113-78 to 113-81:** Repealed by Session Laws 1947, c. 422, §§ 1, 9.

Cross Reference. — As to transfer of properties and interests formerly held by the committee established under the repealed section, see § 143-255.

ARTICLE 6A.

Forestry Services and Advice for Owners and Operators at Forest Land.

§ **113-81.1. Authority to render scientific forestry services.**—The North Carolina Department of Conservation and Development is hereby authorized to designate, upon request, forest trees of forest landowners and forest operators for sale or removal, by blazing or otherwise, and to measure or estimate the volume of same under the terms and conditions hereinafter provided. (1947, c. 384, s. 1.)

§ **113-81.2. Services under direction of State Forester; compensation; when services without charge.**—The administration of the provisions of this article shall be under the direction of the State Forester. The State Forester, or his authorized agent, upon receipt of a request from a forest landowner or operator for technical forestry assistance or service, may designate forest trees for removal for lumber, veneer, poles, piling, pulpwood, cordwood, ties, or other forest products by blazing, spotting with paint or otherwise designating in an approved manner; he may measure or estimate the commercial volume contained in the trees designated; he may furnish the landowner or operator with a statement of the volume of the trees so designated and estimated; he may assist in finding a suitable market for the products so designated, and he may offer general forestry advice concerning the management of the forest.

For such designating, measuring or estimating services the State Forester may make a charge, on behalf of the Department of Conservation and Development, in an amount not to exceed five percent (5%) of the sale price or fair market value of the stumpage so designated and measured or estimated. Upon receipt from the State Forester of a statement of such charges, the landowner or operator or his agent shall make payment to the State Forester within thirty days.

In those cases where the State Forester deems it desirable to so designate and measure or estimate trees without charge, such services shall be given for the purpose of encouraging the use of approved scientific forestry principles on the private or other forest lands within the State, and to establish practical demonstrations of said principles. (1947, c. 384, s. 2.)

§ **113-81.3. Deposit of receipts with State treasury.**—All moneys paid to the State Forester for services rendered under the provisions of this article shall be deposited into the State treasury to the credit of the Department of Conservation and Development. (1947, c. 384, s. 3.)

SUBCHAPTER IIA. DISTRIBUTION AND SALE OF HUNTING, FISHING AND TRAPPING LICENSES.

Article 6B.

License Agents.

§ **113-81.4. Purpose of article.**—The purpose of this article is to relieve wildlife protectors of responsibility for the distribution of hunting, fishing, and trapping licenses, to establish procedures whereby such licenses shall be issued directly to hunting and fishing license agents, and to provide for strict accountability for all licenses so issued and the proceeds from the sale thereof. (1961, c. 352, s. 1.)

§ **113-81.5. Definitions.**—When used in this article:

(1) The word "Commission" or the phrase "Wildlife Resources Commission" means the North Carolina Wildlife Resources Commission.

(2) The words "Executive Director" mean the Executive Director of the North Carolina Wildlife Resources Commission.

(3) The words "license agent" or "hunting and fishing license agent," or "State hunting and fishing license agent" mean any person, firm or corporation who or which is authorized by the Wildlife Resources Commission to sell hunting and fishing licenses as herein defined.

(4) The word "licenses" and the phrase "hunting and fishing licenses" shall be construed to include:
  a. State resident hunting licenses;
  b. County resident hunting licenses;
  c. Nonresident hunting licenses;
  d. Combination hunting and fishing licenses;
  e. State resident fishing licenses;
  f. County resident fishing licenses;
  g. Resident daily fishing permits;
  h. Nonresident season fishing licenses;
  i. Nonresident five-day fishing licenses;
  j. Nonresident daily fishing licenses;
  k. Resident special trout fishing licenses;
  l. Nonresident special trout fishing licenses;
  m. State resident trapping licenses;
  n. County resident trapping licenses;
  o. Nonresident trapping licenses; and
  p. Special device fishing licenses and special permits for hunting and fishing on wildlife management areas where the same may, in the discretion of the Executive Director, be consigned to State hunting and fishing license agents. (1961, c. 352, s. 2.)

§ **113-81.6. Duty of Wildlife Resources Commission.**—The Wildlife Resources Commission is hereby authorized and directed to relieve all wildlife protectors of responsibility for the distribution of licenses to license agents and of accountability for the proceeds of the sale thereof as soon as may be practicable after July 1, 1962; provided, however, the Commission may require the services of any wildlife protector for the purpose of implementing the provisions of this article, for purposes of investigation and inspection of any hunting and fishing license agent or any applicant for the position of hunting and fishing license agent, and for the purpose of delivering licenses to any agent in any case of emergency. (1961, c. 352, s. 3.)

§ **113-81.7. Authority of the Commission.**—The Wildlife Resources Commission is hereby authorized and empowered:

(1) To appoint qualified persons, firms, or corporations to the position of State hunting and fishing license agent.

(2) To promulgate, publish, disseminate, and enforce regulations, not inconsistent with this article, to govern the distribution and sale of hunting and fishing licenses and to require strict accounting for unsold licenses and the proceeds of sold licenses.

(3) To fix minimum standards, in addition to the requirements of this article, regulating the qualifications of State hunting and fishing license agents, the location and type of places of business at which licenses may be sold, and the facilities provided for the safekeeping of licenses and the proceeds thereof.

(4) To prescribe procedures whereby any hunting and fishing license agent may be relieved of accountability for unsold licenses or the proceeds of sold licenses which may be lost or destroyed due to causes beyond the control of such agent. (1961, c. 352, s. 4.)

§ **113-81.8. Duties of Executive Director of Wildlife Resources Commission.**—The Executive Director of the Wildlife Resources Commission shall:

(1) Assist the Commission with such investigation of applicants for the position of hunting and fishing license agent as may be necessary to determine whether they meet the requirements of this article and such additional standards as may be fixed by the Commission.

(2) Require periodic inspections of the books and records of all State hunting and fishing license agents for the purpose of ascertaining that the provisions of this article and the regulations promulgated hereunder are being complied with.

(3) Dismiss any hunting and fishing license agent who fails to comply with the terms and spirit of this article or the regulations promulgated hereunder.

(4) Prepare and distribute all forms of hunting and fishing licenses and all forms necessary for accurate reporting of license sales and accounting for unsold licenses and the proceeds of sold licenses.

(5) Relieve any hunting and fishing license agent, subject to the regulations of the Commission, of accountability for unsold licenses or the proceeds of sold licenses when it has been made to appear to his satisfaction that such licenses or the proceeds from the sale thereof have become lost or destroyed by reason of a cause or causes beyond the control of such agent. (1961, c. 352, s. 5.)

§ **113-81.9. Qualifications of license agents.**—In addition to such minimum standards as may be fixed by the Commission, applicants for appointment as State hunting and fishing license agent shall be required to produce satisfactory evidence of their financial responsibility. No person, firm or corporation shall be appointed as a hunting and fishing license agent unless the character, reputation, and capabilities of the applicant, by whatever means ascertainable, are such as to convince the Commission that such applicant may safely be permitted to handle public funds. (1961, c. 352, s. 6.)

§ **113-81.10. Bond required of agents.**—Every State hunting and fishing license agent shall, before receiving licenses, give a bond in the amount of two thousand dollars ($2,000.00) payable to the State of North Carolina and conditioned upon a true and prompt accounting for all public moneys received from the sale of hunting and fishing licenses, for all licenses received but remaining unsold, and for the face value of all licenses received but remaining unaccounted for. Such bond may be a blanket bond with corporate surety selected by the Executive Director. Any public official who is required to post an official bond, which in the judgment of the Executive Director is sufficient to protect the State against losses of licenses and license proceeds, may be authorized to sell hunting and fishing licenses without giving the bond required by this section. (1961, c. 352, s. 7.)

§ **113-81.11. Duties of license agents.**—Each State hunting and fishing license agent shall:

(1) Keep accurate records in such manner and form as may be prescribed by the Commission of all licenses received, sold, and remaining unsold, and of all public moneys received from the sale of licenses.

(2) Keep all public funds received from the sale of licenses separate and apart from personal or other business funds.

(3) Permit inspection and audit of all hunting and fishing license records by any authorized officer or employee of the Commission at any time during business hours.

(4) Render a report to the Commission on or before the tenth day of each month during the accounting periods for the types of licenses being sold to include all licenses sold during the preceding calendar month, such report to be accompanied by the stubs and/or carbon copies of all sold licenses and a check or money order for the public funds received from said sales.

(5) Render a final report on or before the fifteenth day of January of each year showing all fishing licenses sold but previously unreported, together with the stubs and/or carbon copies of such licenses and a check or money order for the public funds received from said sales, and, in addition, all fishing licenses received but then remaining unsold.

(6) Render a final report on or before the first day of March of each year showing all hunting, trapping, and combination hunting and fishing licenses sold but previously unreported, together with a check or money order for all public funds received from said sales and the stubs and/or carbon copies of all sold licenses, and, in addition, all such licenses received but then remaining unsold; provided, however, those hunting and fishing license agents who are operators of licensed "controlled shooting preserves" shall have until not later than the fifteenth day of April of each year to make the final report required by this subdivision. (1961, c. 352, s. 8.)

§ **113-81.12. Penalties; dismissal of agents.**—(a) The failure of any State hunting and fishing license agent to perform any of the duties set forth in the preceding section [§ 113-81.11], or failure to comply with any regulation adopted pursuant to this article, shall be cause for immediate dismissal of such agent.

(b) The willful violation of any provision of this article, or of any regulation promulgated pursuant thereto, shall constitute a misdemeanor.

(c) The willful failure or refusal of any hunting and fishing license agent to pay over to the proper authority all public funds received by him from the sale of licenses within the times fixed by this article shall constitute a misdemeanor, and each day's continuance of such willful failure or refusal shall constitute a separate offense.

(d) The dismissal of any hunting and fishing license agent, or the conviction or acquittal of any license agent of a criminal offense under this article shall not operate to extinguish any liability under his bond for failure to account for public funds received from the sale of licenses or for the face value of unsold licenses which remain unaccounted for.

(e) When a check or draft of any license agent remitting public funds for sold licenses shall be returned by the banking facility upon which the same is drawn for lack of funds, such license agent shall be liable for a penalty of five percent (5%) of the amount of such check or draft to the Wildlife Resources Commission, but in no event shall such penalty be less than one dollar ($1.00) or more than two hundred dollars ($200.00). (1961, c. 352, s. 9.)

§ **113-81.13. Repealer.**—This article shall be construed as an amendment to the existing law to the extent that it may conflict therewith, but this article shall not be construed to modify any existing statutory license requirement for engaging in hunting, fishing, trapping, or any other activity for which a license or permit is now required; or to change any of the existing license fees, or fees now allowed by statute to the agents issuing licenses; nor shall it modify the existing statutory requirements and restrictions as to the purposes for which the various license fees may be expended. (1961, c. 352, s. 11.)

SUBCHAPTER III. GAME LAWS.

Article 7.

North Carolina Game Law of 1935.

§ **113-82. Title of article.**—This article shall be known by the short title of "The North Carolina Game Law." (1935, c. 486, s. 1.)

Local Modification.—Currituck: 1935, c. 160.

Cross Reference. — For Wildlife Resources Law, see § 143-237 et seq.

§ **113-83. Definitions.**—For the purpose of this article the following shall be construed, respectively, to mean:

Board—Board of Conservation and Development.

Closed season—The time during which birds or animals may not be taken.

Commissioner—Commissioner of Game and Inland Fisheries.

Common carrier—Railroad companies, boat lines, express companies, bus lines, and any person transporting persons or property for hire.

Fur-bearing animals—Skunk, muskrat, raccoon, opossum, beaver, mink, otter and wildcat.

Game—All game animals and game birds.

Game animals—Deer, bear, fox, squirrels, rabbits, and wild boar.

Migratory wild waterfowl—Anatidaw or waterfowl, including brant, wild duck, geese and swans; migratory wild birds, gruiae or cranes, including little brown, sandhill, and whooping cranes; rallidae, or rails, including coots, gallinules, sora, and other rails; limicolae, or shore birds, including avocets, curlew, dowitchers, godwits, knots, oyster catchers, phalaropes, sandpipers, snipes, stilts, surf birds, turnstones, willet, woodcock, and yellow legs; columbidae or pigeons, including doves and wild pigeons.

Nongame animals—All wild animals except game and fur-bearing animals.

Nongame birds—All wild birds except upland game birds and migratory game birds.

Open season—The time during which birds or animals may be lawfully taken. Each period of time prescribed as an open season shall be construed to include the first and last days thereof.

Person—The plural or singular as the case demands, including individuals, associations, partnerships, and corporations, unless the context otherwise requires.

Take—Whenever it is made lawful to "take" birds or animals, or parts thereof, or birds' nests or eggs, it shall mean the pursuit, hunting, capture or killing of birds or animals, or collecting of birds' nests or eggs in the manner, at the time, and by means specifically permitted. Whenever it is made unlawful to "take" birds or animals or parts thereof, or birds' nests or eggs, the word "take" shall include pursuing, shooting, hunting, killing, capturing, trapping, snaring, and netting birds or animals, collecting birds' nests or eggs, and all lesser acts, such as disturbing or annoying birds or animals, or placing or using any net or other device for the purpose of taking birds or animals, whether or not they result in the taking of such birds or animals.

Transport—Shipping, transporting, carrying, importing, exporting, receiving or delivering for shipment, transportation, carriage or export.

Upland game birds—Quail, commonly known as bobwhite or partridge, wild turkey, grouse, and pheasants of all kinds. (1935, c. 486, s. 2; 1953, c. 304.)

§ 113-84. Powers and duties of the Board of Conservation and Development.—It shall be unlawful to take or pursue any of the wildlife of the State at any time or in any manner, except at such times and in such manner as the supply of said wildlife may justify, and the said Board is hereby directed to make adequate investigations as to the said supply and thereupon shall, by appropriate rules and regulations:

(1) Fix seasons and bag limits or close seasons on any species of game, bullfrogs, bird, or fur-bearing animal, in any specified locality or localities, or the entire State, when it shall find, after said investigation, that such action is necessary to assure the maintenance of an adequate supply thereof. The statutes now governing such subjects shall continue in full force and effect, except as altered or modified by rules and regulations promulgated by the Board.

(2) Fix seasons and bag limits or close season on any species, age, size or sex of deer in any specified locality or localities, or the entire State, when it shall find, after said investigation and after a public hearing held by the Commission in the area to be affected when determining the advisability of an open season on doe deer, that such action is necessary to assure the maintenance of an adequate and balanced supply thereof. Provided, however, that in any locality where the use of rifles is permitted for the taking of deer, the Wildlife Resources Commission shall be authorized to fix an open season on doe deer on any day or at any time concurrent with the open season on male deer. This provision shall apply only to the counties of Burke, Caldwell, Rutherford, Surry, Wilkes and counties lying west of the same. Where the number of eligible hunters exceeds the number of doe deer to be harvested as determined by the Wildlife Resources Commission, the Commission shall establish some system of issuing permits in order to regulate the harvest of doe deer.

(3) Establish and close to hunting or trapping game or bird refuges on public lands and, with the consent of the owner, on private lands; and close streams and lakes, or parts thereof to hunting or trapping.

(4) Acquire by purchase, grant, condemnation, lease, agreement, gift, or

devise lands or waters suitable for the purposes hereinafter enumerated, and develop, operate and maintain the same for said purposes:

a. Game farms or game refuges.

b. Lands or waters suitable for game, bird or fur-bearing animal restoration, propagation or protection.

c. For public hunting or trapping areas to provide places where the public may hunt or trap in accordance with the provisions of law or the regulations of the Board.

d. To extend and consolidate by exchange lands or waters suitable for the above purposes.

e. To capture, propagate, transport, buy, sell, or exchange any species of game, bird or fur-bearing animal, needed for propagation or stocking purposes, or to exercise control measures of undesirable species.

(5) Enter into cooperative agreements with educational institutions and State, federal or other agencies, to promote wildlife research and to train men for wildlife management.

(6) Enter into cooperative agreements with federal agencies, municipalities, corporations, organized groups of landowners, associations and individuals, for the development of game, bird or fur-bearing animal management and demonstration projects.

(7) The North Carolina Wildlife Resources Commission is hereby authorized, by appropriate rules and regulations, to license the operation of controlled shooting preserves and revoke such licenses for cause. "Controlled shooting preserve" means an area on which only domestically raised game birds are taken. For each calendar year or part thereof during which any licensee operates, said licensee shall pay to the Wildlife Resources Commission an annual license fee of fifty dollars ($50.00), and such annual license shall be issued only upon the payment of said fifty dollars ($50.00).

(8) The North Carolina Wildlife Resources Commission is hereby authorized, by appropriate rules and regulations, to fix seasons and bag limits for domestically raised native, nonnative and hybrid species of game birds taken on licensed controlled shooting preserves, which seasons and bag limits are not required to be the same as for game birds which are not domestically raised. (1935, c. 486, s. 4; 1957, cc. 386, 841; 1961, cc. 311, 1056.)

Local Modification.—Pender, as to subdivision (2): 1957, c. 386, s. 2½.

Editor's Note.—Section 2 of the 1957 amendatory act provides that the act shall not be construed to modify, repeal or abrogate any of the provisions of article 24 of chapter 143 of the General Statutes known as the "North Carolina Wildlife Resources Law."

Power to Acquire Land for Game Farms or Game Refuges. — The Wildlife Resources Commission has been delegated the power to acquire land for game farms or game refuges in the public interest under this section and § 143-237 et seq., but the public need for such project in a particular locality must first be established by a certificate of public convenience and necessity from the North Carolina Utilities Commission under § 40-53. State ex rel. North Carolina Util. Comm'n v. Story, 241 N.C. 103, 84 S.E.2d 386 (1954).

§ 113-85. Limitations on powers.—Nothing in this article, however, shall be construed to authorize the Board to change any penalty prescribed by law for a violation of its provisions, or to change the amount of license fees or the authority conferred by licenses prescribed by law. (1935, c. 486, s. 4.)

§ 113-86. Organization of work.—The Board shall establish such departmental bureaus or divisions and shall authorize the Commissioner to employ such experts, clerks, or other employees as it may deem necessary for the conduct of the work of the Board, and it shall fix their salaries or other compensation, which shall be paid out of the game and fish fund. The Board shall authorize such scientific and other studies as may be deemed necessary to its work, and shall collect, classify and disseminate such statistics, data and information as in its discretion will tend to promote the objects of this article. (1935, c. 486, s. 4.)

§ **113-87. Permits to kill game injurious to agriculture.**—The Board shall have power to issue permits to kill any species of birds or animals which may become seriously injurious to agriculture or other interests in any particular community, or such birds or animals may be captured alive by it or under its discretion and planted in other sections of the State for restocking, or may be disposed of in such other manner as it may determine: Provided, that birds and animals committing depredations may be taken at any time without a permit while committing, or about to commit, such depredations. Any permit issued pursuant to this section shall expire within four (4) months after the date of issuance. (1935, c. 486, s. 4.)

§ **113-88. Publication of rules and regulations of Board.** — Rules, regulations and orders of the Board shall be published in the following manner: Those having general application throughout the State shall be published at least once in some newspaper published in and having general circulation throughout the State and at each county courthouse door; those of special character having local application only shall be published at least once in some newspaper published in and having general circulation in the locality wherein such rules, regulations and orders are applicable and at the county courthouse door; but, if no such newspaper is so published and circulated, copies of such rules, regulations and orders shall be posted in at least three conspicuous places in the locality in which they are applicable and at the county courthouse door. Such rules, regulations and orders may also be given such other publicity as the Board may deem desirable. (1935, c. 486, s. 5.)

§ **113-89. County game commissions.**—This article shall not be construed to dissolve any game commissions now existing in the several counties, nor to prohibit the creation of game commissions in the several counties and such commissions now existing and such as may be created shall exist, but supervision of the provisions of this article and the direction of the policies and administration of this article and other laws which may exist for the same purpose as this shall be vested in and abide with the Board and the powers of such county commissions as may exist or may be created shall be of a nature advisory and recommendatory to the Board and the exercise of any powers by them shall require the approval of the Board of Conservation and Development. (1935, c. 486, s. 6.)

§ **113-90. Appointment of Commissioner; salary; expenses; bond; office.** — The Director with the approval of the Board shall appoint a commissioner, who shall receive a salary fixed by the Board, not exceeding five thousand dollars per annum, payable monthly upon his own requisition. The Commissioner shall be reimbursed for his actual and necessary traveling expenses, not to exceed one thousand five hundred dollars per annum, incurred in the discharge of his official business when he is away from the place where his office is located, to be paid by proper voucher. The Commissioner shall give bond in the sum of ten thousand dollars, to be approved by the State Treasurer, conditioned upon his faithful performance of the duties imposed upon him by the provisions of this article. The bond shall be filed with the State Treasurer and the premiums paid from the State Game Fund. The Commissioner shall have his office in the offices of the Board at the Capital. (1935, c. 486, s. 7.)

§ **113-91. Powers of Commissioner.** — In accordance with, and subject to, such rules and regulations as may from time to time be adopted by the Board relating thereto, the Commissioner shall have the following powers:

(1) To Issue Permits. — The Commissioner may issue a permit, revocable for cause, to any person, authorizing the holder to collect and possess wild animals or wild birds or birds' nests or eggs for scientific, propagation, or exhibition purposes. Before such a permit to take for scientific purposes is issued, the applicant must file written testimonials from two well known ornithologists or zoologists and pay the sum of two dollars ($2.00) for the permit, but duly accredited representatives of public educational or scientific institutions, or governmental departments of the United States engaged in the scientific study of birds and animals, may be granted such a permit without endorsements or charge or without being required to obtain a hunting license. If the Commissioner is satisfied of the good faith of the applicant, he shall issue to him a permit, which shall fix the date of its expiration, and may fix a restriction upon the number and kinds of animals, birds, or birds' nests or eggs to be taken thereunder, but no such permit shall be valid after the last day of the calendar year in which it is issued. Permits to take game animals or game birds during the closed season shall not be issued except to a duly accredited representative of a school, college, university, public museum or other institution of learning, or a representative of the federal government engaged in the scientific study of birds and animals or to a duly accredited representative of a State game department or Commission to restock the covers of the State which he represents. Specimens of birds or animals legally taken and birds and animals reared in domestication pursuant to the provisions of this article and to the regulations of the Board may be bought, sold, and transported at any time by any person holding a valid permit issued in accordance with the provisions of this section. When transported by common carrier or contained in a package, said specimens or any package in which the same are transported shall have clearly and conspicuously marked on the outside the name and address of the consignor and consignee, and an accurate statement of the numbers and kinds of birds and animals, specimens or parts thereof, or birds' nests or eggs contained therein, and that such specimens are for scientific or propagation purposes. Each person receiving a permit under this section must file, at the expiration of his permit, with the Commissioner a report of his operations under the permit, which report shall set forth the name and address of the permittee, the number of his permit, the number of each species of birds, animals or birds' nests or eggs taken thereunder or otherwise acquired, disposition of the same, names and addresses of persons acquiring the same from the permittee, and number of each species on hand for propagation purposes at the expiration of the permit. The Board is hereby authorized to prescribe from time to time rules and regulations governing the possession, purchase, sale and transportation of birds and animals raised in domestication pursuant to the provisions of this article.

(2) To Employ Deputies. — The Commissioner may employ such game protectors, deputy game protectors, refuge keepers, employees, and agents as shall be necessary for the proper carrying out of the provisions of this article, and with the approval of the Board shall arrange the compensation for such protectors, deputy protectors, refuge keepers, employees and agents. Qualifications for the office of game protector shall be considered in the appointment of all game and fish protectors who shall be required to pass an examination showing their knowledge of provisions of the game and fish laws, the purposes of the protection of wildlife, and essential matters of administration of these

statutes. Said examination shall be prepared under the supervision of the Commissioner and given in the county or district in which the said protector will serve and shall be conducted under the direction of the Commissioner or some suitable person designated by him. The Commissioner shall have general supervision and control over all such protectors, deputy protectors, refuge keepers, and employees, and shall enforce all the provisions of this article and any other laws now in force or hereafter enacted for the protection of wild birds and animals, and shall exercise all necessary powers incident thereto. It shall be the duty of the protectors, deputy protectors, refuge keepers, and employees to obey and carry out the instructions and directions of the Commissioner for the enforcement of this article.

(3) To Prepare Form of License.—It shall be the duty of the Commissioner to prepare forms of licenses and other forms necessary for use in the administration of the provisions of this article, and to properly distribute them to the officers and persons required to issue licenses or use such forms. Each license shall be issued in the name of the Commissioner and countersigned by the officer or person issuing it. Each licensee shall sign his name in ink on the license issued him. The Commissioner shall cause the license accounts of officers and persons issuing licenses to be examined and audited at least once during each year, and shall require such officers and persons promptly to pay him, in accordance with the provisions of this article, all moneys received by them from the sales of licenses.

(4) To Execute Warrants.—The Commissioner and each of his deputies shall have power to execute all warrants issued for violation of this article, and to serve subpoenas issued for examination, investigation, or trial of offenders against any of the provisions of this article; to make search, after having first obtained proper warrant therefor, of any place or thing which such deputies have cause to believe contains wild birds or animals, or any part thereof, or the nest or eggs of birds possessed in violation of law; to seize wild birds or animals, or parts thereof, or nests, or eggs of birds killed, captured, or possessed in violation of law or showing evidence of illegal killing; to arrest without warrant any persons committing a violation of this article in his presence, or upon reasonable grounds to believe that such person is committing a violation of this article in his presence, and to take such person immediately before a court having jurisdiction for trial or hearing; and to exercise such other powers of peace officers in the enforcement of the provisions of this article, or of judgments obtained for violation thereof, as are not herein specifically conferred.

(5) To Dispose of Seized Game and Devices.—All game birds and the edible portions of game animals seized under the provisions of this article shall be disposed of by the Commissioner, or under his direction, by gift to hospitals, charitable institutions or almshouses in the county taken within the State. Nongame birds or parts thereof and the plumes or skins of wild birds or birds of foreign species shall be disposed of by the Commissioner by gift to scientific educational institutions within the State, or may be retained by him for use of the Board, or in his discretion they may be destroyed. The Commissioner shall take a receipt from the donee for any such gift, and file such receipt in his office, and he shall keep a permanent record of such gifts. The heads, antlers, horns, hides, skins, or feet, or parts of any game or fur-bearing animal, seized under the provisions of this article, if the person from whom the same were seized is convicted of violating any of the provisions of this article, or if the owner thereof is unknown,

may be sold for cash by the Commissioner, or under his direction, at public auction to the highest bidder. Notice of the time and place of such sale, together with a description of the articles to be sold, shall be given by the Commissioner or under his direction in such manner as he may determine to be best calculated to bring the best price therefor: Provided, that if the property seized is perishable, that same may be disposed of by the Commissioner immediately. The Commissioner or his deputies authorized to make the sale shall issue to the purchaser a certificate stating that the purchaser has the legal right to be in possession of the articles bought, and anyone so acquiring said article or articles from the State, other than the person from whom they were seized, shall have the right to possess the same. If the person from whom any of said articles were seized be acquitted of the charge of violating any of the provisions of this article, the article so seized shall be returned to him. It shall be, and is hereby made, the duty of each deputy to make a full and complete report to the Commissioner of all property by him confiscated because of a violation of the game laws of this State, showing in detail a description of the property, the person from whom it was confiscated, the price received therefor upon public sale, and the disposition of the money. The Commissioner shall keep in his office a permanent record showing all property confiscated by him or any of his deputies, and the disposition made thereof under the provisions of this article.

(6) To Seize Certain Devices in Certain Cases.—In all cases of violation of any law relating to the unlawful taking of, or unlawful attempt to take any animals, birds, or fish, during the hours after sunset and before sunrise; or taking of or attempt to take, without a permit, deer or wild turkeys in closed season; or the unlawful taking of any doe deer; or the taking of or attempt to take any animals, birds or fish by means or use of dynamite or other explosive; or by the use of any silencer on any weapon; or by the unlawful use of any artificial light, or by means of any trap, net, snare, or other device, the use of which in taking or attempting to take animals, birds, or fish, is prohibited by law; or in case of transportation of game or game fish illegally so taken; or the unlawful taking or transportation of any doe deer; or in case of the unlawful sale of game or game fish, whether taken legally or illegally, all officers, whose duty it is to enforce the game and game fish laws, are hereby empowered to seize all devices, instruments, weapons, air and watercraft, and vehicles used in the unlawful taking of or unlawful attempt to take animals, birds, or fish, at the times or by the means herein mentioned, or used in the transportation of any birds, animals, or fish so taken, or used in the unlawful taking or transportation of any doe deer, or used in the unlawful sale of game or game fish, whether taken legally or illegally. The devices, instruments, weapons, craft, and vehicles so seized shall be delivered to the sheriff of the county in which such offense is committed, or placed under said sheriff's constructive possession, if delivery of actual possession is impracticable; and the same shall be held by said sheriff pending the trial of the person or persons arrested for any of the offenses herein mentioned; and upon conviction of such person or persons of any of said offenses, the court may in its discretion, and subject to the rights of any third person in the property seized, adjudge the property so seized forfeited, and order the same sold in the manner provided by law for the sale of personal property under execution; the net proceeds of such sale shall be paid into the school fund of said county as other fines and forfeitures; the forfeiture

and sale of such property when ordered shall be in addition to such fine or imprisonment as may be imposed by the court.

(7) To Seize Weapons and Devices to Be Used in Evidence.—At the time of making arrests for any violation of any law relating to the unlawful taking of or unlawful attempt to take animals, birds, or fish, the officer making the arrest is hereby empowered to seize any weapon or device unlawfully used in the violation for which the arrest is made; the weapons or devices so seized shall be delivered to the sheriff of the county in which the offense is committed, to be held and used in evidence for the State upon the trial of the person or persons arrested for such violation. After the trial, any weapon or device so seized shall be returned to the owner thereof unless the offense shall be one of the offenses mentioned in subdivision (6) hereof, in which case the same may be returned to the owner thereof in such manner as the court may direct, unless the same be adjudged forfeited and ordered sold by the court upon conviction of the owner thereof for one of the offenses mentioned in said subdivision (6) hereof.

(8) Whenever any devices, instruments, weapons, air or watercraft, or vehicles are seized and placed in the possession of the sheriff pursuant to subdivisions (6) or (7) of this section, any person who establishes ownership in any such property to the satisfaction of the court or the sheriff shall be entitled to possession of the same upon furnishing the sheriff a bond in the amount of the value of such property, as fixed by the sheriff, conditioned on such person's producing such property in court on the day of the trial for the offense with respect to which such property was seized. (1935, c. 486, s. 8; 1949, c. 489; 1957, c. 1423, s. 1.)

Local Modification. — Currituck, Gates, Pasquotank and Perquimans: 1953, c. 680; Washington: 1965, c. 140.

Editor's Note. — Section 3 of the 1957 amendatory act provides that it shall not be construed to repeal any of the provisions of article 24 of chapter 143 as they modify §§ 113-91 and 113-141.

Necessity for Acceptance of Appointment.—It was held in Birchfield v. Department of Conservation & Dev., 204 N.C. 217, 167 S.E. 855 (1933), decided under a prior law (1927, c. 51), that, although a man may have been appointed deputy game warden, he is not an employee of the State before he has received word of his appointment and accepted it.

Homicide Committed by Wildlife Protector Engaged in Performance of His Official Duties. — See State v. Ellis, 241 N.C. 702, 86 S.E.2d 272 (1955).

§ **113-92. Officers constituted deputy game protectors.**—All sheriffs, deputy sheriffs, police officers, forest wardens, park patrolmen, refuge keepers, constables and all other peace officers are hereby made deputy game protectors, and it shall be made their duty to aid in the enforcement of this law. The arrest fee taxed in bills of cost in criminal actions growing out of the violation of this article or violation of laws regulating fishing, except commercial fishing, when the arrest is made by a game protector or a deputy game protector, shall be paid by the justice of the peace or other criminal court taxing same into the general school fund of the county where the violation took place. No fee shall be taxed in bills of cost for the use and benefit of a game protector or deputy game protector, who appears as a witness at the trial of such case. Any game protector or deputy game protector, who takes arrest fees or witness fees in violation of this article, shall be guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned or both in the discretion of the court, and in addition thereto, upon conviction, he shall forfeit his office. This article shall not apply to sheriffs or deputy sheriffs, who are on fee basis and who make arrests and appear as witnesses in such cases. In no event shall the cost of an action involving the violation of the game and fish laws be taxed against the county or State. (1935, c. 486, s. 9; 1939, c. 119.)

Editor's Note. — Session Laws 1951, c. 575, changed "forest warden," as used in § 113-48 et seq., to read "forest ranger."

§ 113-93. Protectors, deputy protectors, and refuge keepers constituted special forest wardens.—The Commissioner, protectors, deputy protectors and refuge keepers are hereby made ex officio special forest wardens and charged with the duty of reporting to the forest wardens all infractions of the forest fire law and to assist forest wardens in extinguishing forest fires and generally enforcing the laws and regulations for the preservation of the forests. (1935, c. 486, s. 10.)

Cross Reference.—As to State Forester and forest rangers, duties, etc., see § 113-52 et seq.

Editor's Note. — Session Laws 1951, c. 575, changed "forest warden," as used in § 113-48 et seq., to read "forest ranger."

§ 113-94. Payment to State Treasurer of license fees.—The Commissioner shall promptly pay to the State Treasurer all moneys received by him from the sale of hunting licenses or from any other source arising through the administration of this article, and the State Treasurer shall deposit all such money in a special fund, to be known as the State Game Fund, and which is hereby reserved, set aside, appropriated and made available until expended as may be directed by the Board in the enforcement of this article and for the purposes of this article. (1935, c. 486, s. 11.)

§ 113-95. Licenses required.—No person shall at any time take any wild animals or birds without first having procured a license as provided by this article, which license shall authorize him to take game only during the periods of the year when it shall be lawful. The applicant for a license shall fill out a blank application in the form prescribed and furnished by the Commissioner. Said application shall be subscribed and sworn to by the applicant before an officer authorized to administer oaths in this State, and the persons hereby authorized to issue licenses are hereby authorized to administer oaths to applicants for such licenses. Licenses may be issued by the clerk of the superior court for each county, the Commissioner, game protectors and such other persons as the Commissioner may authorize in writing:

License Fees

Nonresident hunting license	$20.00
Nonresident six-day hunting permit	15.75
State resident hunting license	4.25
Combination hunting and fishing license	6.25
County hunting license	1.65

Any applicant who is a resident of this State shall pay to the authorized license issuing agent the license fee for the type of license applied for in accordance with the above schedule. The issuing agent is authorized to retain, for each license sold, the sum of fifty cents (50¢) as his fee for issuing nonresident hunting licenses, twenty-five cents (25¢) for State resident hunting licenses and combination hunting and fishing licenses, and fifteen cents (15¢) for county hunting licenses; provided, however, that employees of the Wildlife Resources Commission shall not collect issuance fees and shall sell all licenses for fifty cents (50¢), twenty-five cents (25¢), or fifteen cents (15¢) less than the stated amounts as appropriate. The county hunting license shall entitle a resident of the State to take game birds and animals in the county of his residence; the State resident hunting license shall entitle a resident to take game birds and animals in any county in the State at large, in accordance with the North Carolina game laws and appropriate regulations of the Wildlife Resources Commission. All persons who have lived in this State for at least six months immediately preceding the making of such application shall be deemed resident citizens for the purposes of this article. Said applicant, if a nonresident of this State or a resident for less than six months, or an alien, shall pay to the agent issuing the license nineteen dollars and fifty cents ($19.50) as a license fee and the sum of fifty cents (50¢) as a fee to the agent issuing the same and shall obtain a nonresident hunting license, which shall entitle him to take game birds and animals as authorized by this article during an entire season; provided that a nonresident may hunt for six consecutive days during a season upon the purchase of a permit provided by the Wildlife Resources Commission for fifteen dollars and fifty cents ($15.50) as a permit fee and twenty-five cents (25¢) as a fee to the agent issuing the same. The Commissioner is hereby authorized and empowered to issue combination licenses for hunting and fishing which said combination license may be for an amount less than the total of the hunting and fishing license when purchased separately. For a State resident hunting and fishing license the applicant shall pay to the officer or person issuing the license the sum of six dollars ($6.00) as a license fee and twenty-five cents (25¢) as a fee for issuing same, which shall entitle him to hunt and fish in any county of the State at large according to the law: Provided, that twenty-five cents (25¢) of the fee received for the sale of each resident State hunting license, each nonresident hunting license, and each State resident hunting and fishing license as set forth above shall be set aside as a special fund which shall be expended by the North Carolina Wildlife Resources Commission, in its discretion, for the purpose of purchase, lease, development and management of lands and waters in North Carolina, or for the purpose of securing federal funds for wildlife conservation projects through means of matching federal funds in such proportion as federal laws may require, and that twenty-five cents (25¢) of each State fee herein described shall be expended by such Commission, in its discretion, for the purpose of enlarging, expanding and making more effective the work of the education and enforcement divisions of the North Carolina Wildlife Resources Commission. Any lands and waters acquired as above provided are to be used for the propagation of game birds, game animals and fish for public hunting and fishing.

Any person acting for hire as a hunting guide shall obtain a guide's license, and shall pay therefor a license fee in an amount not to exceed the sum of ten dollars ($10.00), the Board being hereby authorized and empowered to provide classifications, and to fix fees within said limit as to class. The Commissioner is hereby authorized and empowered to prescribe rules and make regulations respecting the duties of guides, to require that guides take an oath to abide by the game laws of the State, and to rescind the license of any guide who violates the regulations or is convicted of violating the game laws of the State: Provided, that the Commissioner may, upon request, issue a nonresident license to any game agent of the United States or of a state of the United States without payment of any fee, which license may be used by such agent of the United States or of a state of the United States only in the discharge of his official business: Provided, that a nonresident who holds fee simple title to lands in North Carolina may hunt on such lands by payment of a license fee of five dollars ($5.00) plus twenty-five cents (25¢) for the issuing officer. Such nonresident must make a sworn application to the Commissioner, on forms provided by said Commissioner, setting forth the location of such lands, the nonresident's title thereto, and such other information as may be required by the Commissioner, and if such nonresident be a corporation, then only the nonresident president, the vice-president, the secretary-treasurer, and the directors, not to exceed seven in number, of such corporation, shall be permitted to take out a nonresident landowner's hunting license, as herein provided.

Any nonresident owning in his own right and in severalty one hundred acres or more of land in the State of North Carolina may hunt upon such lands, subject to the provisions and restrictions of the North Carolina Game Law, without being required to purchase a hunting license.

Notwithstanding any other provisions of this section, an applicant shall be permitted to hunt on a "controlled shooting preserve," as defined in subdivision (7) of G.S. 113-84, if he possesses a special controlled shooting preserve hunting license. Said applicant shall pay to the officer or person issuing the license the sum of five dollars ($5.00) as a license fee, and the sum of twenty-five cents (25¢) as a fee to the officer or person, other than the Commissioner, for issuing the same, and shall thereby obtain a controlled shooting preserve license entitling such person to hunt, during the year for which such license is issued, on any controlled shooting preserve in the State without the necessity of having any other hunting license. (1935, c. 486, s. 12; 1937, c. 45, s. 1; 1945, c. 617; 1949, c. 1203, s. 1; 1957, c. 849, s. 1; 1959, c. 304; 1961, c. 834, s. 1.)

Cross Reference.—As to agents for sale and distribution of hunting, fishing and trapping licenses, see § 113-81.4.

Editor's Note.—Section 3 of the 1957 amendatory act provides that the act shall not be construed to modify or repeal any of the provisions of article 24 of chapter 143 as the same affects this section.

§ 113-95.1. Licenses for members of armed forces.—All members of the armed forces of the United States stationed at a military facility in North Carolina shall be required to meet State hunting license requirements, as provided by this article, on all land within the State including land under jurisdiction of the armed forces; provided, however, that any member of the armed forces who is a nonresident of North Carolina, and who is assigned to active duty at a military facility in North Carolina, shall be entitled to purchase a resident State hunting license without regard to State residence requirements. (1951, c. 1112, s. 1.)

§ 113-96. Trappers' licenses.—Any person who shall at any time take fur-bearing animals by trapping, shall take out and shall annually procure a trapper's license, and shall pay therefor the sum of two dollars ($2.00) as a license fee, and the sum of twenty-five cents (25¢) as a fee to the officer or person other than the Commissioner of Game and Inland Fisheries, for issuing the same, and shall obtain a license which shall permit him to trap in the county of his residence, or, shall pay the sum of three dollars ($3.00) as a license fee and the sum of twenty-five cents (25¢) as a fee to the officer or person other than the Commissioner, for issuing the same, and shall obtain a license which shall entitle him to trap in any county in the State and in the State at large. Said applicant, if a nonresident of this State, or a resident of less than six months, or an alien, shall pay to the officer or person issuing the license, the sum of twenty-five dollars ($25.00) as a license fee, and the sum of twenty-five cents (25¢) as a fee to the officer or person, other than the Commissioner, for issuing the license, and shall obtain a nonresident trapper's license, which shall entitle him to trap in the State at large. Trapping licenses shall be issued on forms to be provided by the Commissioner, and shall be distinguished from the general hunting licenses above provided. The manner of taking fur-bearing animals by trapping, shall be as provided in this article. The Board is authorized to issue combination licenses for hunting and trapping, which said combination licenses may be for an amount less than the total of the trapping and hunting licenses when purchased separately. The proceeds from the sale of trapping licenses and/or combination hunting and trapping licenses shall be subject to the disposition made in this article. (1929, c. 278, s. 3.)

Cross Reference.—As to agents for sale and distribution of hunting, fishing and trapping licenses, see § 113-81.4.

§ 113-97. Term and use of license.—Each license shall be void after the first day of August next succeeding the date of its issuance. Each licensee shall have his license on his person at all times when he is taking game animals or game birds, and shall exhibit the same for inspection to any game protector or other officer requesting to see it. No person shall alter or loan, change, or transfer any license issued pursuant to the provisions of this article, nor shall any person other than the person to whom it is issued use the same. (1935, c. 486, s. 13.)

§ 113-98. Exemption.—Any person who is a resident of this State, and any dependent member of his family under twenty-one years of age, may take game birds and wild animals in the open season for the same, and not contrary to the provisions of this article, on lands owned by such resident without a license; and a minor member of a family resident of this State, under sixteen years of age, may hunt under the license of his parent or guardian; but such minor must carry such license when so hunting, unless accompanied by such parent or guardian; and a nonresident minor child of any resident of this State may lawfully procure and use the same license required of a resident, when such nonresident child is actually visiting such resident parent: Provided, that a party who leases a farm for cultivation shall not be required to obtain a license to hunt thereon. (1935, c. 486, s. 14.)

§ 113-99. Disposition of license fees. — The license fees provided to be paid in this article shall be remitted by the officers or persons issuing the license on the first and fifteenth of each month to the Commissioner with a schedule setting forth the name and address of each licensee, the serial number and classification of the license, and the amount paid for each license issued, except that the officer or person issuing licenses shall, before making such remittance, deduct and retain as his fee the amount of fees provided to be paid to him by the provisions of this article for issuing license. On or before the first day of April of each year, each officer or person authorized to issue license shall forward to the Commissioner the stubs of licenses issued by him and all unused licenses, together with a report covering the number of licenses issued and the amount of license money received by him; the Commissioner shall tabulate the total number of licenses of all kinds issued in the State and the fees received therefor, and he shall include such data in his biennial report. (1935, c. 486, s. 15.)

§ 113-100. Open season.—The open seasons for taking game animals and game birds, subject to changes by the Board of Conservation and Development from time to time as the supply of wildlife shall justify, are as follows:

Bear	October 1 to January 1
Deer (male)	October 1 to January 1
Mink, muskrat, otter	November 1 to February 15
Opossum, raccoon (with gun or dogs)	October 1 to February 1
Opossum, raccoon (trapping)	November 1 to February 15
Quail	Thanksgiving Day of each year to February 15
Rabbit	Thanksgiving Day of each year to February 15
Squirrel	September 15 to January 15
Turkey	Thanksgiving Day of each year to February 1
Woodcock	December 1 to December 31
Ruffed grouse	November 20 to December 15
Wildcat, weasel, skunk	No closed season
Beaver, buffalo, elk, doe deer and pheasants	No open season
Dove, ducks, geese, brant and other migratory waterfowl	Federal regulations
Snipe, sora, marsh hens, rails, gallinules	Federal regulations
Fox	County regulations

The open and closed season on all migratory wild fowl shall conform with the

United States biological survey legislation, irrespective of seasons as set forth by the North Carolina Game Law. (1935, c. 486, s. 16.)

Local Modification. — Hertford, as to certain areas: 1953, c. 963.

§ **113-101. Bag limits.**—It shall be unlawful to take a greater number of each species of birds or animals per day or per season than is enumerated in the following table. The Board of Conservation and Development may alter these bag limits as changes in the supply of wildlife may justify.

	Per Day	Per Season
Bear	No limit	No limit
Deer	1	3
Mink, muskrat, otter	No limit	No limit
Opossum, raccoon	No limit	No limit
Quail	10	150
Rabbit	No limit	No limit
Squirrel	10	No limit
Turkey	1	3
Ruffed grouse	2	10

Woodcock—Federal regulations.
Dove, ducks, geese, brant and other migratory waterfowl—Federal regulations.
Snipe, sora, marsh hens, rails, gallinules—Federal regulations.
Wildcat, weasel and skunk—No limit.
Fox—County regulations.

Game birds and game animals lawfully taken may be possessed during the open season therefor and the first ten (10) days next succeeding the close of such open season, but a person may not have in possession at any one time more than two (2) deer, two (2) wild turkeys and two days' bag limit of other game animals or game birds.

Notwithstanding any other provisions of this section or any other section of law, it shall not be unlawful for any person to possess game birds and game animals for a period longer than ten (10) days next succeeding the close of the open season during which such birds or animals were lawfully taken, provided a written declaration of the kinds and amounts of birds or animals so possessed is filed with the county game and fish protector within ten (10) days of the close of the season during which such birds or animals were taken, but the amount and kinds of such birds and animals possessed at any one time shall not exceed the limitations imposed by law on the possession of any such birds or animals.

The bag limit, possession limit and open seasons on dove and all other migratory birds and wild fowl shall be the same as that prescribed by the United States biological survey legislation irrespective of bag limits, possession limits and seasons set forth by the North Carolina Game Law. (1935, c. 486, s. 17; 1949, c. 1205, s. 1.)

§ **113-102. Protected and unprotected game.**—(a) Birds and animals for which no open season is provided shall be classed as protected and it shall be unlawful to take or possess them at any time. Unprotected birds and animals may be taken, possessed, bought, sold and transported at any time in any manner.

(b) Unprotected Birds: English sparrows, great horned owls, Cooper's hawks, sharp-shinned hawks, crows, jays, blackbirds, starlings and buzzards and their nests and eggs.

(c) Unprotected Animals: Wildcats, weasels and skunks; provided, that unprotected birds and animals may not be killed by the use of poison or dynamite except under permit issued by the Commissioner.

(d) No person shall take squirrels at any time in any public park. It shall be unlawful at any time to buy, or sell, rabbits or squirrels for the purpose of resale.

Rabbits may be box-trapped or hunted without gun at any time. The setting of steel traps for bear is unlawful. Foxes may be taken with dogs only, except during the open season, when they may be taken in any manner. It shall be unlawful at any time to take any wild deer while swimming or in water to its knees. It shall be unlawful to take alligators or their eggs at any time. (1935, c. 486, s. 18; 1949, c. 1205, s. 2; 1965, c. 904, s. 1.)

Local Modification.—Lee: 1953, c. 688.

Editor's Note. — The 1965 amendment added the last sentence in subsection (d).

Section 1½, c. 904, Session Laws 1965, provides: "This shall not apply to the landowner or owners."

Session Laws 1951, c. 450, as amended by Session Laws 1957, c. 34, provides: It shall be unlawful for any person to take, or attempt to take, by the use of firearms, any game bird or animal from the right-of-way of any public highway, roadway, or other publicly maintained thoroughfare, and this act shall apply only to the county of Duplin.

§ **113-103. Unlawful possession.** — The possession, transportation, purchase or sale of any dead game animals, dead game birds, or parts thereof during the closed season in North Carolina, though said animals, birds, or any parts thereof were taken or killed without the State in the open season in such state, shall be unlawful; and the possession of same shall be prima facie evidence of the violation thereof: Provided, said animals or birds or parts thereof belong to any one of the family or classes protected by the North Carolina Game Law as amended to date.

The Commissioner, all game protectors, deputy game protectors and refuge keepers shall have the power to enter and search any refrigeration plant, refrigerators and ice boxes of all public refrigerating storage plants, meat shops, hotels, restaurants, or other public eating places, in which such officer, making such search, has reasonable grounds to believe that game taken, killed or stored in violation of the North Carolina Game Law has been concealed or stored, and which will furnish evidence of a violation of such laws; and such search may be made without warrant, except that no dwelling may be searched without a warrant. (1935, c. 486, s. 19.)

§ **113-104. Manner of taking game.**—No person shall at any time of the year take in any manner, number, or quantity any wild bird or wild animal, or take the nests or eggs of any wild bird, or possess, buy, sell, offer or expose for sale, or transport at any time or in any manner any such bird, animal, or part thereof, or any birds' nests or eggs, except as permitted by this article; the possession of any game animals, or game birds or part of such animals or game birds, except those expressly permitted by the Board, in any hotel, restaurant, cafe, market or store, or by any produce dealer in this State shall be prima facie evidence of the possession thereof for the purpose of sale in violation of the provisions of this article; but this provision shall not be construed to prohibit the person lawfully obtaining game from having it prepared in a public eating place and served to himself and guest: Provided, however, that for the purpose of this article any person hiring another to kill aforesaid game animals or game birds and receiving same shall be deemed buying same, and subject to the penalties of this article. Game birds and game animals shall be taken only in the daytime, between sunrise and sunset, with a shotgun not larger than number ten (10) gauge, a rifle, or with bow having minimum pull of forty-five (45) pounds and nonpoisonous, nonbarbed, nonexplosive arrow with minimum broadhead width of seven-eighths of an inch, unless otherwise specifically permitted by this article: Provided, however, blunt type arrowheads may be used in taking game birds and small game animals including, but not by way of limitation, rabbits, squirrels, quail, grouse, turkeys and pheasants. No person shall take any game animals or game birds or migratory game birds from any automobile, or from any engine powered or self-propelled vehicle or any vehicle especially equipped to provide facilities for taking deer by any unlawful means, or by aid of or with the use of any jacklight, or other artificial light, net, trap, snare, fire, salt lick or poison; nor shall any such jacklight, net, trap, snare, fire, salt lick or poison be used or set to take any animals or birds; nor shall birds or animals be taken at any time from an airplane, power boat, sailboat, or any boat under sail, or any floating device towed by a power boat or sailboat or, during the hours between sunset and sunrise, from any other floating device; nor shall any person take any dove, wild turkey, or upland game bird on any field, or in any cover in which corn, wheat, or other grain has been deposited for the purpose of drawing such birds thereto. However, it shall be lawful to use an artificial light when hunting raccoons or opossum with dogs, or when hunting frogs. A person may take game birds and wild animals during the open season therefor with the aid of dogs, unless specifically prohibited by this article. It shall be lawful for individuals and organized field trial clubs or associations for the protection of game, to run trials or train dogs at any time: Provided, that no shotgun be used and that no game birds or game animals shall be taken during the closed season by reason thereof. The Board shall have, and is hereby given, full power and authority to make regulations defining the manner of taking fur-bearing animals and to prohibit the use of steel traps in any county or districts of the State when it shall appear necessary and advisable to the said Board. Any person who shall cut down den trees in taking game or fur-bearing animals shall be guilty of a misdemeanor.

It shall be unlawful for any person or persons to hunt with guns or dogs upon the lands of another without first having obtained permission from the owner or owners of such lands, and said permission so obtained may be continuous for one open hunting season only.

It shall be unlawful for any person to hunt, take or kill any upland game birds, squirrels or rabbits with or by means of any automatic-loading or hand-operated repeating shotgun capable of holding more than three shells, the magazine of which has not been cut off or plugged with a one-piece metal or wooden filler incapable of removal through the loading end thereof, so as to reduce the capacity of said gun to not more than three shells at one time in the magazine and chamber combined. It shall be unlawful for any person while hunting wild birds and animals with a gun to refuse to surrender such gun for inspection upon request of a duly authorized officer. It shall also be unlawful to shoot any such birds while such birds are sitting on the ground.

It shall be unlawful for any person to possess, sell, or offer for sale any noose-type commercially-manufactured snare by which an animal may be entangled and caught.

It shall be unlawful for any person to take or kill or attempt to take or kill any deer from or through the use of any boat or other floating device; provided that this section shall not prohibit the transportation of hunters or their legally taken game by means of any boat or other floating device, and shall not prohibit the hunter shooting from his stand, if such stand is not within or a part of such boat or floating device. This paragraph shall not apply to the counties of Beaufort, Bertie, Burke, Camden, Carteret, Cherokee, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Edgecombe, Gates, Hertford, Hoke, Lenoir, Martin, Northampton, Pamlico, Pasquotank, Perquimans, Person, Robeson, Sampson, Surry, Swain, Tyrrell, Washington, Wayne and Yadkin. (C. S., s. 2124; 1935, c. 486, s. 20; 1939, c. 235, s. 1; 1949, c. 1205, s. 3; 1955, c. 104; 1959, cc. 207, 500; 1961, c. 1182; 1963, c. 381; c. 697, ss. 1, 3½.)

Editor's Note.—The first 1963 amendment inserted the words "or from any engine powered or self-propelled vehicle or any vehicle especially equipped to provide facilities for taking deer by any unlawful means" near the beginning of the third sentence.

The second 1963 amendment added the last paragraph.

Cited in Pegg v. Gray, 240 N.C. 548, 82 S.E.2d 757 (1954).

§ **113-105. License to engage in business of game propagation; sale and transportation regulated.** — Any person desiring to engage in the business of propagating in captivity upland game birds, ducks and geese, or any of them on land of which he is the owner or lessee and selling same pursuant to the provisions of this section, may make application in writing to the Commissioner for a license to do so. The Commissioner, when it shall appear that such application is made in good faith, shall upon the payment of a fee of two dollars ($2.00), issue to each applicant a license permitting such licensee to propagate such game birds on land of which he is the owner or lessee, the location of which shall be stated in such application and such license; to sell and ship such propagated game birds in the State from the State alive at any time for breeding or stocking purposes and take such propagated game birds except quail and wild turkey in any manner and at any time and sell the carcasses for food as hereinafter prescribed: Provided, that propagated upland game birds may be killed by shooting only during the open season as established by the Board; and, provided further, that propagated migratory game birds may be killed by shooting only during the open season for migratory game birds. Each such license shall expire on the thirty-first day of December of the year in which it is issued. Each holder of a game bird propagating license shall keep such license prominently displayed at the place of business specified therein.

Every person holding a game bird propagating license issued by the Commissioner shall keep accurate, written records, showing the number of game birds of each species propagated, bought, or sold, and the disposition thereof. These records shall be kept permanently on the premises stated in such license and shall be open for inspection by any duly authorized representative of the Commissioner at all reasonable times.

Migratory game birds propagated in accordance with this section shall not be bought or sold for food, unless each bird before attaining the age of four weeks, shall have had removed from the web of one foot a portion theref in the form of a "V" large enough to make a well-defined mark, which shall be sufficient to identify it as a bird propagated in accordance with this section of the North Carolina Game Law. Migratory game birds propagated in accordance with this section may be bought, sold or offered for sale for food only after being tagged with an indestructible metal tag which shall be supplied by the Board.

Common carriers shall receive and transport game birds tagged as aforesaid but to every package containing such propagated game birds shall be affixed a tag or label upon which shall plainly be printed or written the name, address and license number of the person by whom such propagated game birds are shipped and the name and address of the person to whom such propagated game birds are to be transported and number of each kind contained therein. The Board shall be entitled to receive and shall collect for each tag to be affixed to the carcass of each game bird propagated, in accordance with this section, the sum of five cents. The said tags shall remain affixed as aforesaid until the carcasses of such propagated game birds shall be finally prepared for consumption: Provided, that the owner or proprietor of a hotel, restaurant, boardinghouse, or the manager of a club, may sell a portion of a tagged game bird to a guest, customer, or member, for consumption on the premises.

The proprietor or keeper of a hotel, restaurant or cafe, boardinghouse or club, desiring to serve game to his patrons, may make application to the Department of Conservation and Development for a license to do so. The Department, when it shall appear that such application is made in good faith, shall upon the payment of a fee of ten dollars ($10.00) issue to each such applicant a license permitting the holder thereof to buy and possess game birds lawfully tagged, and to serve such game to his patrons for consumption at any time, but only on the premises, the location of which shall be definitely stated in such license and the application therefor. Each such license to serve game birds shall expire on the thirty-first day of December in the year in which it is issued. Each person holding a license to serve game birds shall keep such license prominently displayed at the place of business specified therein. The holder of a license to serve game birds may purchase only game birds tagged in accordance with law. Each holder of a license to serve game birds shall keep accurate written records of each and every purchase, which records shall contain the name and address of the person or corporation from whom such game birds were purchased, the date of each transaction and the number and kind of game birds included in each purchase. These records shall be kept permanently at the place of business specified in the license and shall be open for inspection by any duly authorized representative of the Department at all reasonable times. Each holder of a license to serve game birds shall send a certified copy of these records for the previous calendar year to the Department not later than January fifteenth. The Department shall furnish the forms on which these records are to be kept. The Board is hereby authorized to prescribe from time to time rules and regulations governing the possession, purchase, sale and transportation of birds raised in domestication pursuant to the provisions of this article. (1935, c. 486, s. 21.)

§ 113-105.1. Possession, sale and transportation of certain ring-necked pheasants and chukar partridges legalized.—Nothing herein contained shall be deemed or held to prohibit or to render unlawful any market, store or any produce dealer in this State from possession, buying, selling, offering or exposing for sale or transporting, at any time or in any manner, any ring-necked pheasants or chukar partridges, or carcasses thereof, propagated in captivity and tagged with an indestructible metal tag as provided for by G.S. 113-105. (1957, c. 1007.)

§ 113-106. Unlawful transportation. — No common carrier or employee of such carrier shall, while engaged in such business, transport for the owner any wild animals or birds or any part thereof, or nest or eggs of any bird, nor shall any such carrier or employee knowingly receive or possess the same for shipment for another, unless the person offering the same for shipment is in possession of valid hunting license or collecting permit. A person who is a resident of this State may transport within the State during the open season therefor, game birds and game animals lawfully taken. A person who is a nonresident of the State and a holder of a valid nonresident hunting license, may, under a permit issued by the Commissioner, transport within this State, or from a point within to a point without, during the open season therefor, game birds and game animals or parts thereof lawfully taken by him, but he shall not transport out of the State during any one open season more than two male deer and two wild turkeys, or during one calendar week more than two days' bag limit of other game animals and game birds. A person may transport, buy, or sell at any time or in any manner, nongame animals and the fur of fur-bearing animals lawfully taken and tagged. A person may transport, and possess at any time and in any manner the head, antlers, hides, feet or skin of game animals or game birds lawfully taken. A person may buy and sell at any time the mounted specimens of heads, antlers, hides and feet of game animals, and the skins of game birds lawfully taken and possessed: Provided, the person selling such specimens has a written permit issued by the Commissioner, authorizing him to do so. (1935, c. 486, s. 22; 1941, c. 231, s. 1.)

§ 113-107. Marking packages in which game transported. — Any package in which any wild animal or bird or parts thereof or egg or nest of any wild bird is transported shall have clearly and conspicuously marked on the outside thereof, the names and addresses of the consignor and consignee, together with an accurate statement of the number and kinds of animals or birds or parts thereof, or eggs or nests, contained therein. (1935, c. 486, s. 23.)

§ 113-108. Privately owned public hunting grounds.—In order to improve hunting, to open to the hunting public lands well stocked with game, and to give landowners some income through game protection and propagation, the State of North Carolina, through the Department of Conservation and Development, is authorized to recognize, list, and assist the owners in protecting their lands which are a part of public hunting grounds organized under this section of the North Carolina Game Law, subject to the following conditions, stipulations, and such rules as the Conservation Board may adopt for the regulation of said hunting grounds:

(1) The minimum area recognized under this article is one thousand (1,000) acres;

(2) Owners of land included in a hunting ground formed under this article must organize, adopt rules and regulations for the operation of said hunting grounds, and be recognized by the Department of Conservation and Development before such hunting grounds are put into operation under this article;

(3) The Department of Conservation and Development will list and assist in advertising such public hunting grounds as are formed under this article, subject to such rules and regulations as may be adopted by the Board from time to time, and in accordance with the North Carolina Game Law and this article. The Department of Conservation and Development will furnish at cost to the owners of public hunting grounds posters to be used in posting such lands, such posters to state that the lands are posted under this section of the North Carolina Game Law and in case of withdrawal of recognition by the Department such posters shall be removed from the land affected within ten days after notice to owner or owners;

(4) Owners of public hunting grounds shall require of each and every hunter the prescribed hunting licenses as set forth elsewhere in the North Carolina Game Law;

(5) The owners of public hunting grounds may require of each and every hunter a per day rate for hunting, rates to be approved by the Department of Conservation and Development, said rates not to exceed four dollars ($4.00). In addition to charges for privileges of shooting game, landowners may charge a dog hire when landowners furnish dogs, dogs to be furnished only by request of the hunter;

(6) When any group of owners of a public hunting ground, organized under this article, decide to promote the hunting of certain kinds of game, said kinds of game used for stocking to be propagated in game breeding plants organized and operated under the game and other laws of North Carolina, the owner shall be permitted to charge hunters such fees and rates as are approved by the Board of Conservation and Development;

(7) No hunter is allowed to quit the hunting grounds at the end of the day's or part of a day's hunting without seeing the authority who gave him permission to hunt on said hunting grounds and paying all accounts due said authority;

(8) No construction or interpretation shall be put on this section or any part thereof as to permit the sale of dead game killed in accordance with this article, abrogate the bag limits, time of hunting, open and closed seasons as prescribed elsewhere in the North Carolina Game Law;

(9) No person shall hunt or discharge firearms upon any public hunting grounds organized under this section without being accompanied by one of the landowners or a personal representative of one landowner, or after securing, on the day of the hunt, or day preceding the hunt, written permission to hunt under the authority of this article, said

written permission to bear the name in full, age, and address of the hunter, under the penalty of being fined in the courts, upon conviction, not less than twenty-five dollars ($25.00) for each and every offense;

(10) When hunting grounds or any part thereof, organized and operated under this article are used for purposes not consistent with the federal, State and local laws, the Department of Conservation and Development shall withdraw recognition from the area of such parts thereof as are deemed advisable, and report the case to the proper civil officials. (1935, c. 486, s. 24.)

§ **113-109. Punishment for violation of article.**—(a) Any person, or group of persons, who takes, possesses, transports, buys, sells, offers for sale, or has in possession for sale or transportation, any wild bird, or wild animals, or any part thereof, or the nest or egg of any wild bird, in violation of any of the provisions of this article, or who violates any other of the provisions of this article, or who fails to perform any duty imposed upon him by this article, or who violates any lawful order, rule or regulation relating to game birds and animals and game fish promulgated by the Wildlife Resources Commission shall be guilty of a misdemeanor and upon the first offense and conviction thereof shall be fined not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) or imprisoned for not more than thirty days, unless a greater penalty be prescribed for the specific act or acts. Upon the second offense, a person convicted thereof shall be fined not less than thirty-five dollars ($35.00) nor more than two hundred dollars ($200.00), or by imprisonment for not more than six months, or both in the discretion of the court. Any person, firm, or corporation who buys or sells, or offers to buy or sell, game birds or game animals in violation of the provisions of this article shall, upon conviction thereof, be fined not less than fifty dollars ($50.00) or imprisoned for not more than sixty days, or both fined and imprisoned in the discretion of the court. In all cases of conviction under this article, the court in which such conviction is had shall revoke and require the surrender of any hunting license then held by the person so convicted, which license shall be forwarded together with the record of such conviction to the Wildlife Resources Commission. Such revocation of license shall be mandatory for the remainder of the period for which the license was issued, and any person whose license has been revoked who procures or uses any other hunting license, or hunts with gun or dogs without a license during this period shall be guilty of a misdemeanor, and shall, upon conviction, be fined not less than fifty dollars ($50.00) or imprisoned for not less than thirty days, and in addition shall have his license buying privilege suspended for an additional year following such conviction. Any person who shall swear or affirm to any false statement in any application for a hunting license shall be deemed guilty of perjury and on conviction shall be subject to the punishment provided for in the crime of perjury.

(b) Any person who takes or attempts to take deer between sunset and sunrise with the aid of a spotlight or other artificial light on any highway or in any field, woodland, or forest, in violation of this article shall, upon conviction, be fined not less than two hundred fifty dollars ($250.00) or imprisoned for not less than ninety days. The flashing or display of any artificial light from any highway or public or private driveway so that the beam thereof is visible for a distance of as much as fifty feet from such highway or public or private driveway, or such flashing or display of such artificial light at any place off such highway or driveway, when such acts are accompanied by the possession of firearms or bow and arrow during the hours between sunset and sunrise, except as authorized herein for the hunting of raccoons, opossums, or frogs, shall constitute prima facie evidence of a violation of the provisions of the preceding sentence.

(c) It shall be unlawful for any person, or group of persons, to take, attempt to take, or have in possession doe (female) deer in violation of the provisions of article 7 of chapter 113 of the General Statutes. Any person who takes, attempts to take, or has in possession doe (female) deer in violation of this article shall, upon conviction, be fined not less than one hundred dollars ($100.00) or imprisoned not less than ninety days, or both fined and imprisoned in the discretion of the court.

(d) Any person who shall take or attempt to take wild turkey during the closed season thereon as established by the Wildlife Resources Commission, or any person who shall take or attempt to take wild turkey during the open season as established by the Wildlife Resources Commission by the use of any unlawful means or method as defined in G.S. 113-104, shall, upon conviction, be fined not less than one hundred dollars ($100.00) or imprisoned for not less than ninety (90) days, or both in the discretion of the court.

(e) Any person who shall take or kill or attempt to take or kill any deer from any boat or other floating device in violation of the provisions of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00), or imprisoned for not less than thirty (30) days nor more than sixty (60) days, in the discretion of the court. This subsection shall not apply to the counties of Beaufort, Bertie, Burke, Camden, Carteret, Cherokee, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Edgecombe, Gates, Hertford, Hoke, Lenoir, Martin, Northampton, Pamlico, Pasquotank, Perquimans, Person, Robeson, Sampson, Surry, Swain, Tyrrell, Washington, Wayne and Yadkin.

(f) The provisions of this section relating to penalties shall not apply in the case of deer killed while destroying crops on the land owned or leased by the person killing such deer. (1935, c. 486, s. 25; 1939, c. 235, s. 2; c. 269; 1941, c. 231, s. 2; c. 288; 1945, c. 635; 1949, c. 1205, s. 4; 1953, c. 1141; 1963, c. 147; c. 697, ss. 2, 3½; 1965, c. 616.)

Local Modification.—Buncombe: 1941, c. 156; Pitt: 1941, c. 285.

Editor's Note.—The first 1963 amendment inserted subsection (d) and the second 1963 amendment inserted present subsection (e). Former subsection (e) has been redesignated (f).

The 1965 amendment added in subsection (d) the provision as to taking wild turkey during open season by use of any unlawful means.

ARTICLE 8.

Fox Hunting Regulations.

§ **113-110:** Repealed by Session Laws 1945, c. 217.

Editor's Note.—The repealing act provided: "The repeal of this section shall not affect the legal status of any local law listed thereunder as the same was prior to the adoption of the General Statutes of North Carolina by the General Assembly of one thousand nine hundred and forty-three."

Session Laws 1945, c. 844, repealed the portion of this section relating to Duplin County.

§ **113-110.1. Persons required to have fox hunting licenses.**—Any person engaging in fox hunting will be considered to be actively participating, and will be required to have purchased a hunting license, if he owns or handles dogs engaged in the fox hunt; if he is carrying firearms for the purpose of taking foxes, or if he is a member of an organized group formed for the purpose of participating in the fox hunt. Provided, however, persons who are observing a fox hunt, or who have stopped incidentally to witness a part of it, will not be considered active participants, and will not be required to have a license. (1953, c. 1133.)

§ **113-111. No closed season in certain counties.** — It shall be lawful to hunt, take or kill foxes at any time by any lawful method in Alexander, Alleghany, Anson, Ashe, Avery, Cabarrus, Catawba, Davidson, Davie, Forsyth, Franklin, Greene, Harnett, Haywood, Henderson, Iredell, Lenoir, Martin, Nash, Perquimans, Pitt, Rockingham, Rowan, Stokes, Tyrrell, Union, Watauga, and Yadkin counties, and in Bensalem, Sheffields, Ritters, Deep River, and Carthage townships in Moore County. (1931, c. 143, s. 5; 1933, c. 428; 1939, c. 319; 1943, c. 615; 1947, cc. 333, 802; 1949, c. 263; 1953, cc. 196, 197, 199, 200, 960, 989; 1955, cc. 184, 286, 508, 685, 1037, 1039, 1119, 1123; 1957, c. 742, s. 1; 1959, cc. 535, 536, 570; 1963, c. 830; 1965, c. 522.)

Local Modification. — Granville: 1957, c. 1001; Pamlico: 1955, c. 504; Perquimans: 1965, c. 773, repealing 1963, c. 827; Sampson: 1959, c. 544; Warren: 1957, c. 197.

Editor's Note.—The 1963 amendment deleted "Beaufort" from this section.

The 1965 amendment deleted Yancey from the list of counties. The amendatory act makes it unlawful to kill foxes in Yancey County in any manner and makes violation of the act a misdemeanor.

The amendments relating to Anson, Union and Yadkin counties make it a misdemeanor to bring foxes into the county and set them at large.

The amendment relating to Anson and Union counties expressly prohibits the use of a snare.

The amendment relating to Yancey County provides that nothing in the act shall be construed as authorizing the use of a snare.

The amendment relating to Franklin County makes the use of hounds lawful and prohibits the use of guns.

§ 113-112. Police power of protectors in enforcing county laws relative to foxes.—All game protectors duly appointed by the Department of Conservation and Development and all ex officio game protectors named in the North Carolina Game Law shall be authorized and empowered as fully as is the sheriff and other local officers to enforce local and county laws relating to the open and closed seasons to hunt or protect red and grey foxes. (1931, c. 143, s. 5.)

ARTICLE 9.

Federal Regulations on Federal Lands.

§ 113-113. Legislative consent; violation made a misdemeanor.—The consent of the General Assembly of North Carolina is hereby given to the making by the Congress of the United States, or under its authority, of all such rules and regulations as the federal government shall determine to be needful in respect to game animals, game and nongame birds, and fish on such lands in the western part of North Carolina as shall have been, or may hereafter be, purchased by the United States under the terms of the act of Congress of March first, one thousand nine hundred and eleven, entitled "An act to enable any state to cooperate with any other state or states, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purposes of conserving the navigability of navigable rivers" (36 U.S. Stat. at Large, p. 961), and acts of Congress supplementary thereto and amendatory thereof, and in or on the waters thereon.

Nothing in this section shall be construed as conveying the ownership of wildlife from the State of North Carolina or permit the trapping, hunting or transportation of any game animals, game or nongame birds and fish, by any person, firm or corporation, including any agency, department or instrumentality of the United States government or agents thereof, on the lands in North Carolina, as shall have been or may hereafter be purchased by the United States under the terms of any act of Congress, except in accordance with the provisions of article 7 of this subchapter.

Any person, firm or corporation, including employees or agents of any department or instrumentality of the United States government, violating the provisions of this section shall be guilty of a misdemeanor and shall be punished in the discretion of the court. (1915, c. 205; C. S., s. 2099; 1939, c. 79, ss. 1, 2.)

Editor's Note.—For comment on the 1939 amendment, see 17 N.C.L. Rev. 364.

Acceptance May Be Presumed. — Acceptance of such a grant as is made by this section may be presumed. Chalk v. United States, 114 F.2d 207 (1940).

Acceptance of Jurisdiction over Pisgah National Forest and Pisgah National Game Preserve. — A Federal statute authorizing the President of the United States to designate areas set aside for protection of game and fish on lands purchased by the United States, and punishing the unlawful taking of game or fish, constituted an acceptance by the United States of the cession to it of jurisdiction over the Pisgah National Forest and the Pisgah National Game Preserve by a prior act of the legislature of North Carolina. Chalk v. United States, 114 F.2d 207 (4th Cir. 1940).

Limitation of Number of Deer Therein. —Where the United States acquired land by grant from North Carolina for the Pisgah National Forest and the Pisgah National Game Preserve, and the legislature of North Carolina enacted an act consenting that Congress should make rules and regulations with respect to animals, birds, and fish, and it was established that the deer herd on the Preserve was so large as to damage the Preserve, the United States could, without regard to State laws, limit the number of deer thereon. Chalk v. United States, 114 F.2d 207 (4th Cir. 1940).

Article 10.

Regulation of Fur Dealers; Licenses.

§ **113-114. Fur dealer's license; fees.**—Every person, firm or corporation who engages in the business of buying and selling raw furs, pelts or skins of fur-bearing animals shall before beginning such business, and annually thereafter, obtain a license from the Department of Conservation and Development. The fees for such licenses shall be as follows:

(1) For a resident state-wide license, the sum of twenty-five dollars. This license will entitle the holder to buy and sell furs in any or all of the counties in North Carolina.

(2) For a resident county license, the sum of ten dollars. This license will entitle the holder to buy and sell furs only in the county designated in the license. The fee for each additional county shall be ten dollars.

(3) For a resident county license which entitles the dealer to buy or sell only at a fixed place of business in the county of his residence, the sum of five dollars.

(4) For a nonresident of the State, the sum of one hundred dollars for a state-wide license.

These licenses shall be issued through the game protectors or agents of the Department of Conservation and Development as a part of their official duties. The funds so received from the sale of the above licenses shall be deposited with the State Treasurer to the credit of the Department of Conservation and Development and they shall be expended for the protection and promotion of the fur-bearing industry in North Carolina and for the administration and enforcement of this article and for no other purpose. (1929, c. 333, ss. 1, 2; 1933, c. 337, s. 1.)

§ **113-115. Annual report of furs bought.**—Every person, firm or corporation who takes out a fur dealer's license shall report to the Department of Conservation and Development on April first of each year and every year the total amount of furs bought by such dealer, including the species of fur-bearing animals and the number of each, and such other information as required by the Department of Conservation and Development. (1929, c. 333, s. 3.)

§ **113-116. What counties may levy tax.**—No county, city or town shall have the right to levy any license on resident fur dealers except that the county in which such dealers or buyers maintain a place of business or residence may charge and collect from such dealers a license tax of not more than five dollars per annum. (1929, c. 333, s. 4; 1933, c. 337, s. 2.)

§ **113-117. Permits may be issued to nonresident dealers.** — It shall be lawful for the Department of Conservation and Development to issue permits to nonresident dealers for the purchase of raw furs from only state-wide licensed fur dealers in North Carolina. (1929, c. 333, s. 5; 1933, c. 337, s. 3; 1935, c. 471, s. 1.)

Cited in Simkins v. Moses H. Cone Memorial Hosp., 211 F. Supp. 628 (M.D.N.C. 1962).

§ **113-118. Licenses for each employee of dealer; fees; residence requirement.**—All bona fide members of a resident firm or corporation and their bona fide regular employees, all such members and employees being residents of North Carolina, shall be required to take out a license showing their employment and shall pay therefor the sum of twenty-five dollars each: Provided that the employees of a resident firm or corporation operating under a county resident fur dealer's license shall be required to pay only the sum of ten dollars ($10.00). Applicants for resident fur dealer's license must have actually resided in the State for six months next before making application for such license. (1929, c. 333, s. 6; 1933, c. 337, s. 4; 1935, c. 471, s. 3.)

§ **113-119. Nonresident buying furs personally or through agent classed as nonresident fur dealer.**—Any nonresident person, firm or corporation or any agent or person acting as agent therefor, who in any manner purchases or solicits to purchase furs in North Carolina, except as provided in § 113-117, shall be subject to and shall procure from the Department of Conservation and Development a nonresident fur dealer's license before he shall be entitled to purchase or solicit to purchase furs as above set out in this section. (1929, c. 333, s. 7; 1935, c. 471, s. 2.)

§ **113-120. Violation a misdemeanor.**—Any person, firm or corporation who shall violate any of the provisions of this article shall be guilty of a misdemeanor and shall be fined not more than one hundred dollars or imprisoned not more than sixty days for the first offense, and on conviction of second violation of this article such person, firm or corporation shall pay not less than two hundred dollars or be imprisoned not more than six months or both in the discretion of the court. (1929, c. 333, s. 8.)

Article 10A.

Trespassing upon "Posted" Property to Hunt, Fish or Trap.

§ **113-120.1. Trespass for purposes of hunting, etc., without written consent a misdemeanor.**—Any person who wilfully goes on the land, waters, ponds, or a legally established water fowl blind of another upon which notices, signs or posters, described in § 113-120.2, prohibiting hunting, fishing, or trapping, or upon which "posted" notices have been placed, to hunt, fish or trap without the written consent of the owner or his agent shall be guilty of a misdemeanor and punished by a fine of not less than fifteen dollars ($15.00) nor more than fifty dollars ($50.00) or by confinement in jail for not more than thirty days, in the discretion of the court, provided, that if a violation of this section be committed at nighttime between the hours of sunset and sunrise, the person so offending shall be punished by a fine of not less than thirty dollars ($30.00) nor more than fifty dollars ($50.00) or by confinement in jail for not more than thirty days, in the discretion of the court. Provided, further, that no arrests under authority of this section shall be made without the consent of the owner or owners of said land, or their duly authorized agents in the following counties: Halifax, Onslow, Warren. (1949, c. 887, s. 1; 1953, c. 1226; 1965, c. 1134.)

Editor's Note.—The 1965 amendment rewrote this section.

§ **113-120.2. Regulations as to posting of property.**—The notices, signs, or posters described in G.S. 113-120.1 shall measure not less than 10 inches by 12 inches and shall be conspicuously posted on private lands not more than 500 yards apart close to and along the boundaries. At least one such notice, sign, or poster shall be posted on each side of such land, and one at each corner thereof, provided that said corner can be reasonably ascertained. For the purpose of prohibiting fishing, or the taking of fish by any means, in any stream, lake, or pond, it shall only be necessary that the signs, notices, or posters be posted along the stream or shore line of a pond or lake at intervals of not more than 300 yards apart. (1949, c. 887, s. 2; 1953, c. 1226; 1965, c. 923.)

Editor's Note. — The 1965 amendment deleted "not less than 150 yards and" following "private land" in the first sentence, and added the last sentence.

§ **113-120.3. Mutilation, etc., of "posted" signs; posting signs without consent of owner or agent.**—Any person who shall mutilate, destroy or take down any "posted," "no hunting" or similar notice, sign or poster on the lands, waters, or legally established water fowl blind of another, or who shall post such sign or poster on the lands, waters or legally established water fowl blind of another, without the consent of the owner or his agent, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than fifteen dollars ($15.00). (1949, c. 887, s. 3; 1953, c. 1226.)

§ **113-120.4. Entrance on navigable waters, etc., for purpose of fishing, hunting or trapping not prohibited.** — Nothing in this article shall be construed to prohibit the entrance of any person upon navigable waters and the bays and sounds adjoining such waters for the purpose of fishing, hunting or trapping. (1949, c. 887, s. 4; 1953, c. 1226.)

ARTICLE 10B.

Liability of Landowners to Authorized Users.

§ **113-120.5. Liability of persons allowing others to use premises for certain purposes limited.**—Except as provided in § 113-120.6, an owner, lessee, occupant or person in control of premises who gives permission to another to hunt, fish, trap, camp, hike, or for other recreational use upon such premises does not thereby extend any assurance that the premises are safe for such purpose, or that a duty of care is owed or that he assumes responsibility for or incurs liability for any injury to person or property caused by an act of persons to whom the permission is granted, nor to any person or persons who enter without permission: Provided, that nothing contained in this section or article shall be construed as limiting or nullifying the doctrine of attractive nuisance as the same prevails in this jurisdiction. (1963, c. 298.)

§ **113-120.6. What liability not affected.** — This article does not affect the liability which would otherwise exist for failure to guard, or to warn, against a dangerous condition, use, structure or activity; or for injury suffered in any case where permission to hunt, fish, trap, camp, hike, or for other recreational use was granted for a consideration other than the consideration, if any, paid to said landowner by the State or paid by other governmental unit; or for injury caused by acts of persons to whom permission to hunt, fish, trap, camp, hike, or for other recreational use was granted, or to other persons as to whom the person granting permission, or the owner, lessee, occupant, or person in control of the premises, owed a duty to keep the premises safe or to warn of danger. (1963, c. 298.)

§ **113-120.7. Meaning of "premises".**—As used in this section the word "premises" includes lands, waters, and private ways and any buildings and structures on such lands, waters, and private ways. (1963, c. 298.)

ARTICLE 11.

Miscellaneous Provisions.

§ 113-121. Possession of firearm silencer, while hunting game, made unlawful.—It shall be unlawful for any person while hunting game in this State to have in his possession a shotgun, pistol, rifle, or any firearm equipped with a silencer of any type or kind or any device or mechanism designed to silence, muffle, or minimize the report of such firearm, whether such silencer or device or mechanism is separate from or attached to such firearm.

If any person shall be convicted of a violation of this section he shall be fined not less than one hundred dollars ($100.00) or imprisoned not less than sixty days, or both, in the discretion of the court. (1937, c. 152.)

§ 113-122. Sanctuary on Grandfather Mountain; molestation of game a misdemeanor.—Part of Grandfather Mountain situate in the counties of Avery, Caldwell and above the Yonahlossee Road on one side, and above the elevation of four thousand feet on the other side, is established as a sanctuary for the preservation and protection of deer, squirrels and other wild animals (except wildcats), and wild turkeys, pheasants, eagles, hawks, ravens and all other bird life.

It shall be unlawful to trap, hunt, shoot, or otherwise kill, within the sanctuary established by the preceding paragraph, any deer, squirrels, or other wild animals (except wildcats), any wild turkeys, pheasants, eagles, hawks, ravens, or any kind of bird life. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. (1923, c. 191; C. S., ss. 2105(a), 2105(b); 1925, c. 212.)

§ 113-123. Assent of State to act of Congress providing for aid in wildlife restoration projects.—The State of North Carolina hereby assents to the provisions of the act of Congress entitled "An act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes," approved September second, one thousand nine hundred thirty-seven (Public, number four hundred fifteen, seventy-fifth Congress), and the North Carolina Department of Conservation and Development is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects, as defined in said act of Congress, in compliance with said act and rules and regulations promulgated by the Secretary of Agriculture thereunder; and no funds accruing to the State of North Carolina from license fees paid by hunters shall be diverted for any other purpose than the protection and propagation of game and wildlife in North Carolina and administration of the laws enacted for such purposes, which laws are and shall be administered by the Division of Game and Inland Fisheries under the direction of the North Carolina Department of Conservation and Development. (1939, c. 271.)

§ 113-124. Birds kept as pets or for breeding. — It shall be lawful to keep any wild bird in a cage as a domestic pet, or for the purposes of breeding, raising and domesticating. (1903 (Pr.), c. 337, ss. 6, 7; Rev., s. 1876; C. S., s. 2103.)

§ 113-125. Bird dogs running at large in certain counties. — It shall be unlawful for the owner or any person having the care of any pointer or setter dog to permit the same to run at large unmuzzled during the breeding season of quail, namely, from April the first to September first of any year. When any pointer or setter dog shall be found ranging unmuzzled in the field or woods it shall be prima facie evidence that the owner of such pointer or setter dog has violated the provisions of this section, and upon conviction such owner or his agent shall be deemed guilty of a misdemeanor and shall be fined not more than fifty dollars or imprisoned not longer than thirty days.

This section shall apply only to the counties of Davidson, Durham, Forsyth, Greene, Guilford, Iredell, Johnston, Moore, Transylvania and Yancey. (1909, c. 775; C. S., s. 2132.)

§ 113-126. Deer; fire-hunting; compelling testimony. — When more persons than one are engaged in committing the offense of fire-hunting, anyone may be compelled to give evidence against all others concerned; and the witness, upon giving such information, shall be acquitted and held discharged from all penalties and pains to which he was subject by his participation in the offense. (1774, c. 103, P. R.; 1784, c. 212, ss. 1, 3, P. R.; 1801, s. 595, P. R.; R. C., c. 34, ss. 95, 96; 1856-7, c. 24; 1879, c. 92; Code, ss. 1058, 1059; 1905, c. 388; Rev., s. 3462; C. S., s. 2125; 1925, c. 194.)

Local Modification.—Currituck: C.S., s. 2125.

SUBCHAPTER IV. CONSERVATION OF FISHERIES RESOURCES.

ARTICLE 12.

General Definitions.

§ 113-127. Application of article. — Unless the context clearly requires otherwise, the definitions in this article apply throughout this subchapter. (1965, c. 957, s. 2.)

Editor's Note. — Session Laws 1965, c. 957, repealed former subchapter IV of this chapter, entitled "Fish and Fisheries," composed of former articles 12 to 26, consisting of §§ 113-127 to 113-377.7, and substituted therefor a revised subchapter IV, entitled "Conservation of Fisheries Resources," composed of present articles 12 to 24, consisting of §§ 113-127 to 113-321. Former article 26, relating to the Marine Fisheries Compact and Commission, and consisting of former §§ 113-377.1 to 113-377.7, was transferred to present article 19 by the act and appears as present §§ 113-252 to 113-258. Sections 19 and 21 of the act provide:

"Sec. 19. In the process of repealing the existing subchapter IV of the General Statutes and all special, local, and private acts and ordinances regulating the conservation of marine and estuarine resources, the repeal of acts which themselves repeal former acts is not intended to revive the former acts.

"Sec. 21. The provisions of this act become fully effective on January 1, 1966. Prior to this date, however, the Department of Conservation and Development and the North Carolina Wildlife Resources Commission are authorized by both regulation and administrative action to take all such steps as may be necessary to implement the orderly transition from the provisions of the former law to the provisions contained in this act. Budgetary and accounting changes required by this act may be placed into effect as of July 1, 1965, in the discretion of the Department or the Commission, except that no increased tax or license fee authorized in this act may be charged for any tax assessed or any license in effect prior to January 1, 1966."

Where the provisions of former sections are similar to new sections in the revised subchapter, the historical citations of the former sections have been added to the new sections.

§ 113-128. Definitions relating to agencies and their powers. — The following definitions apply to powers and administration of agencies charged with the conservation of marine and estuarine and wildlife resources.

Advisory Board: Commercial and Sports Fisheries Advisory Board.

Board: Board of Conservation and Development.

Commercial and Sports Fisheries Advisory Board: The Board described in article 18 of this subchapter. Except as the Advisory Board may be constituted differently from the former Commercial Fisheries Advisory Board so as to make the reference inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to the Commercial Fisheries Advisory Board apply to the Commercial and Sports Fisheries Advisory Board.

Commercial and Sports Fisheries Committee: Commercial and Sports Fisheries

Committee, Board of Conservation and Development. All references in statutes, regulations, contracts, and other legal or official documents to the Commercial Fisheries Committee of the Board of Conservation and Development apply to the Commercial and Sports Fisheries Committee.

Commercial and Sports Fisheries Inspector: The Commissioner and every other employee of the Division of Commercial and Sports Fisheries sworn in as an officer and assigned to duties which include exercise of law-enforcement powers. All references in statutes, regulations, contracts, and other legal or official documents to commercial fisheries inspectors apply to Commercial and Sports Fisheries Inspectors.

Commission: North Carolina Wildlife Resources Commission.

Commissioner: Commissioner of Commercial and Sports Fisheries, Department of Conservation and Development. All references in statutes, regulations, contracts, and other legal or official documents to the Commissioner of Commercial Fisheries apply to the Commissioner of Commercial and Sports Fisheries.

Department: Department of Conservation and Development. Unless the context otherwise indicates, general references to the Department include the Board as well as the Department.

Director: Director, Department of Conservation and Development.

Division of Commercial and Sports Fisheries: Division of Commercial and Sports Fisheries, Department of Conservation and Development. All references in statutes, regulations, contracts, and other legal or official documents to the Division of Commercial Fisheries of the Department of Conservation and Development apply to the Division of Commercial and Sports Fisheries.

Executive Director: Executive Director, North Carolina Wildlife Resources Commission.

Inspector: Commercial and Sports Fisheries Inspector.

Notice; Notify: Where it is required that notice be given an agency of a situation within a given number of days, this places the burden on the person giving notice to make sure that the information is received in writing by a responsible member of the agency within the time limit.

Protector: Wildlife protector.

Wildlife Protector: Every employee of the Commission sworn in as an officer and assigned to duties which include exercise of law-enforcement powers. (1965, c. 957, s. 2.)

§ **113-129. Definitions relating to resources.**—The following definitions apply in the description of the various marine and estuarine and wildlife resources:

Bushel: A dry measure containing 2,150.42 cubic inches.

Coastal Fisheries: Any and every aspect of cultivating, taking, possessing, transporting, processing, selling, utilizing, and disposing of fish taken in coastal fishing waters, whatever the manner or purpose of taking, except for the regulation of inland game fish in coastal fishing waters which is vested in the Commission; and all such dealings with fish, wherever taken or found, by a person primarily concerned with fish taken in coastal fishing waters so as to be placed under the administrative supervision of the Department. Provided, that the Department is given no authority over the taking of fish in inland fishing waters. Except as provisions in this subchapter or in regulations of the Board authorized under this subchapter may make such reference inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fisheries apply to coastal fisheries.

Coastal Fishing: All fishing in coastal fishing waters. Except as provisions in this subchapter or in regulations of the Board authorized under this subchapter may make such references inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fishing apply to coastal fishing.

Coastal Fishing Waters: The Atlantic Ocean; the various coastal sounds; and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department and the Commission. Except as provisions in this subchapter or changes in the agreement between the Department and the Commission may make such reference inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fishing waters apply to coastal fishing waters.

Crustaceans: Crustacea, specifically including shrimp and hard and soft-shelled crabs.

Fisheries Resources: Marine and estuarine resources and such wildlife resources as relate to fish.

Fish; Fishes: All marine mammals; all shellfish; all crustaceans; and all other fishes.

Game Fish: Inland game fish and such other game fish in coastal fishing waters as may be regulated by the Department.

Inland Fishing Waters: All inland waters except private ponds; and all waters connecting with or tributary to coastal sounds or the ocean extending inland from the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department and the Commission.

Inland Game Fish: Those species of freshwater fish, wherever found, and migratory saltwater fish, when found in inland fishing waters, as to which there is an important element of sport in taking and which are denominated as game fish in the regulations of the Commission. No species of fish of commercial importance not classified as a game fish in commercial fishing waters as of January 1, 1965, may be classified as an inland game fish in coastal fishing waters without the concurrence of the Department.

Marine and Estuarine Resources: All fish, except inland game fish, found in the Atlantic Ocean and in coastal fishing waters; all fisheries based upon such fish; all uncultivated or undomesticated plant and animal life, other than wildlife resources, inhabiting or dependent upon coastal fishing waters; and the entire ecology supporting such fish, fisheries, and plant and animal life.

Nongame Fish: All fish found in inland fishing waters other than inland game fish.

Private Pond: A body of water arising within and lying wholly upon the lands of a single owner or a single group of joint owners or tenants in common, and from which fish cannot escape, and into which fish of legal size cannot enter from public waters at any time.

Shellfish: Mollusca, specifically including oysters, clams, mussels, and scallops.

Wild Animals: Game animals; fur-bearing animals; and such other wild mobile creatures included in the definition of wildlife resources which in the discretion of the Commission need protection or regulation in the interests of conservation of wildlife resources.

Wildlife: Wild animals; wild birds; all fish found in inland fishing waters; and inland game fish. Unless the context clearly requires otherwise, the definitions of wildlife, wildlife resources, wild animals, wild birds, fish, and the like are deemed to include species normally wild, or indistinguishable from wild species, which are raised or kept in captivity.

Wildlife Resources: All wild birds; all wild mammals other than marine mammals found in coastal fishing waters; all fish found in inland fishing waters, including migratory saltwater fish; all inland game fish; all uncultivated or undomesticated plant and animal life inhabiting or dependent upon inland fishing waters; waterfowl food plants wherever found, except that to the extent such plants in coastal fishing waters affect the conservation of marine and estuarine resources the Department is given concurrent jurisdiction as to such plants; all undomesticated terrestrial creatures; and the entire ecology supporting such birds, mammals, fish, plant and animal life, and creatures. (1965, c. 957, s. 2.)

§ 113-130. Definitions relating to activities of public. — The following definitions apply to activities of the public in regard to marine and estuarine and wildlife resources:

Individual: A human being.

Owner; Ownership: As for personal property refers to persons having beneficial ownership and not to those holding legal title for security; as for real property, refers to persons having the present right of control, possession, and enjoyment, whether as life tenant, fee holder, beneficiary of a trust, or otherwise. Provided, that this definition does not include lessees of property except where the lease arrangement is a security device to facilitate what is in substance a sale of the property to the lessee.

Person: Any individual; or any partnership, firm, association, corporation, or other group of individuals capable of suing or being sued as an entity.

Resident: In the case of individuals, one who is domiciled in North Carolina, except those domiciled for less than six months; or an individual who at the time in question is living and has for the previous six months been living in North Carolina, without regard to his actual domicile; in the case of corporations, a corporation which is chartered under the laws of North Carolina and has its principal office within the State.

To Fish: To take fish.

To Sell; Sale: Includes a sale or exchange of property, or an offer or attempt to sell or exchange—for money or any other valuable consideration.

To Take: All operations during, preparatory, and subsequent to an attempt—whether successful or not—to capture, kill, pursue, or otherwise harm or reduce to possession any fisheries resources.

Vessel: Every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water. (1965, c. 957, s. 2.)

Article 13.

Jurisdiction of Fisheries Agencies.

§ 113-131. Resources belong to public; stewardship of conservation agencies. — The marine and estuarine and wildlife resources of the State belong to the people of the State as a whole. The Department and the Commission are charged with stewardship of these resources. (1965, c. 957, s. 2.)

§ 113-132. Jurisdiction of fisheries agencies.—(a) The Department has jurisdiction over the conservation of marine and estuarine resources. Except as may be otherwise provided by law, it has jurisdiction over all activities connected with the conservation and regulation of marine and estuarine resources.

(b) The Commission has jurisdiction over the conservation of wildlife resources. Except as may be otherwise provided by law, it has jurisdiction over all activities connected with the conservation and regulation of wildlife resources.

(c) Notwithstanding the provisions of this article, the Department and the Commission do not have jurisdiction over matters with respect to which jurisdiction may now or hereafter be vested in the Board and Department of Water Resources, the State Stream Sanitation Committee, or the State Board of Health.

(d) To the extent that the grant of jurisdiction to the Department and the Commission may overlap, the Department and the Commission are granted concurrent jurisdiction. In cases of conflict between actions taken or regulations promulgated by either agency, as respects the activities of the other, pursuant to the dominant purpose of such jurisdiction, the Department and the Commission are empowered to make agreements concerning the harmonious settlement of such conflict in the best interests of the conservation of the marine and estuarine and wildlife resources of the State. In the event the Department and the Commission cannot agree, the Governor is empowered to resolve the differences.

(e) Those coastal fishing waters in which are found a significant number of freshwater fish, as agreed upon by the Department and the Commission, may be denominated joint fishing waters. Such waters are deemed coastal fishing waters from the standpoint of laws and regulations administered by the Department and are deemed inland fishing waters from the standpoint of laws and regulations administered by the Commission. The Board and the Commission may make joint regulations governing the responsibilities of each agency and modifying the applicability of licensing and other regulatory provisions as may be necessary for rational and compatible management of the marine and estuarine and wildlife resources in such joint fishing waters.

(f) The granting of jurisdiction in this section pertains to the power of agencies to enact regulations and ordinances. Nothing in this section or in § 113-138 is designed to prohibit law-enforcement officers who would otherwise have jurisdiction from making arrests or in any manner enforcing the provisions of this subchapter. (1965, c. 957, s. 2.)

§ **113-133. Abolition of local coastal fishing laws.**—The enjoyment of the marine and estuarine resources of the State belongs to the people of the State as a whole and is not properly the subject of local regulation. As the Department is charged with administering the governing statutes and promulgating regulations in a manner to reconcile as equitably as may be the various competing interests of the people as regards these resources, considering the interests of those whose livelihood depends upon full and wise use of renewable and nonrenewable resources and also the interests of the many whose approach is recreational, all special, local, and private acts and ordinances regulating the conservation of marine and estuarine resources are repealed. Nothing in this section 's intended to invalidate local legislation or local ordinances which exercise valid powers over subjects other than the conservation of marine and estuarine resources, even though an incidental effect may consist of an overlapping or conflict of jurisdiction as to some particular provision not essential to the conservation objectives set out in this subchapter. (1965, c. 957, s. 2.)

Cross Reference. — As to repeal of special, local and private acts and ordinances regulating conservation of marine and estuarine resources not reviving acts repealed by them, see Editor's Note to § 113-127.

§ **113-134. Regulations.** — The Department and the Commission are empowered to promulgate regulations implementing the provisions of this chapter, within the limits of the jurisdiction granted in this article. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., s. 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1251; 1963, c. 1097, s. 1; 1965, c. 957, s. 2.)

§ **113-135. General penalty for violating subchapter or regulations.** —Any person who violates any provision of this subchapter or any regulation adopted by the Department or the Commission pursuant to the authority of this subchapter is guilty of a misdemeanor. Unless a different level of punishment is elsewhere set out, anyone convicted of such a misdemeanor may be fined not exceeding fifty dollars ($50.00). Noncriminal sanctions, such as license revocation or suspension, and exercise of powers auxiliary to criminal prosecution, such as seizure of property involved in the commission of an offense, do not constitute alternative levels of punishment so as to oust criminal liability. (1965, c. 957, s. 2.)

§ **113-136. Enforcement authority of inspectors and protectors; refusal to obey or allow inspection by inspectors and protectors.** — (a) Inspectors and protectors are granted the powers of peace officers anywhere in this State in enforcing all matters within their respective subject-matter jurisdiction as set out in this section.

(b) The jurisdiction of inspectors extends to all matters within the jurisdiction of the Department as set out in this subchapter and to all other matters within the jurisdiction of the Division of Commercial and Sports Fisheries.

(c) The jurisdiction of protectors extends to all matters within the jurisdiction of the Commission, whether set out in this chapter, chapter 75A, chapter 143, or elsewhere.

(d) Inspectors and protectors are additionally authorized to arrest without warrant under the terms of § 15-41 for felonies, for breaches of the peace, for assaults upon them or in their presence, and for other offenses evincing a flouting of their authority as enforcement officers or constituting a threat to public peace and order which would tend to subvert the authority of the State if ignored. In particular, they are authorized, subject to the direction of their administrative superiors, to arrest for violations of §§ 14-223, 14-224, 14-225, 14-269, and 14-277.

(e) Inspectors and protectors may serve warrants, subpoenas, and other process connected with any cases within their subject-matter jurisdiction. In the exercise of their law-enforcement powers, inspectors and protectors are subject to provisions relating to police officers in general set out in chapter 15 and elsewhere.

(f) Inspectors and protectors are authorized to stop temporarily any persons they reasonably believe to be engaging in activity regulated by their respective agencies to determine whether such activity is being conducted within the requirements of the law, including license requirements. If the person stopped is in a motor vehicle being driven at the time and the inspector or protector in question is also in a motor vehicle, the inspector or protector is required to sound a siren or activate a special light, bell, horn, or exhaust whistle approved for law-enforcement vehicles under the provisions of § 20-125 (b) or 20-125 (c).

(g) Protectors may not temporarily stop or inspect vehicles proceeding along primary highways of the State without clear evidence that someone within the vehicle is or has recently been engaged in an activity regulated by the Commission. Inspectors may temporarily stop vehicles, boats, airplanes, and other conveyances upon reasonable grounds to believe that they are transporting taxable seafood products; they are authorized to inspect any seafood products being transported to determine whether they were taken in accordance with law and to require exhibition of any applicable license, tax receipts, permits, bills of lading, or other identification required to accompany such seafood products.

(h) The refusal of any person to stop in obedience to the implicit or explicit directions of an inspector or protector acting under the authority of this section is unlawful. It is unlawful to refuse to exhibit upon request any license, permit, tax receipt, certificate, or identification required to be carried by any law or regulation as to which inspectors and protectors have enforcement jurisdiction. It is unlawful to refuse to allow inspectors and protectors to inspect weapons, equipment, fish, or wildlife regulated by any law or regulation as to which inspectors and protectors have enforcement jurisdiction.

(i) Nothing in this section authorizes searches within the curtilage of a dwelling or of the living quarters of a vessel in contravention of constitutional prohibitions against unreasonable searches and seizures. (1915, c. 84, s. 6; 1917, c. 290, s. 2; C. S., s. 1885; 1935, c. 118; 1957, c. 1423, s. 2; 1965, c. 957, s. 2.)

§ 113-137. Search on arrest; seizure and confiscation of property; disposition of confiscated property. — (a) Every inspector or protector who arrests a person for an offense as to which he has enforcement jurisdiction is authorized to search the person arrested and the surrounding area for weapons and for fruits, instrumentalities, and evidence of any crime for which the person arrested is or might have been arrested.

(b) Every inspector or protector who issues a citation instead of arresting a person, in cases in which the inspector or protector is authorized to arrest, may seize all lawfully discovered evidence, fruits, and instrumentalities of any crime as to which he has arrest jurisdiction and probable cause.

(c) Every inspector or protector who in the lawful pursuit of his duties has probable cause for believing he has discovered a violation of the law over which he has jurisdiction may seize in connection therewith any fish, wildlife, weapons, equipment, vessels, or other evidence, fruits, or instrumentalities of the crime, notwithstanding the absence of any person in the immediate area subject to arrest or the failure or inability of the inspector or protector to capture or otherwise take custody of the person guilty of the violation in question. Where the owner of such property satisfies the Commissioner or the Executive Director, as the case may be, of his ownership and that he had no knowledge or culpability in regard to the offense involving the use of his property, such property must be returned to the owner. If after due diligence on the part of employees of the Department or the Commission, as the case may be, the identity or whereabouts of the violator or of the owner of the property seized cannot be determined, such property may be sold by the Department or the Commission in accordance with the provisions of this section.

(d) The Board and the Commission may provide by regulation for summary disposition of live or perishable fish seized by an inspector or protector pursuant to subsection (b) or (c) or pursuant to a search authorized under subsection (a). If the property seized consists of live fish which may again be placed to the benefit of the public on public grounds or in public waters, the inspector or protector may require the person in possession of the seized live property to transport it such distance as may be necessary to effect placement on appropriate grounds or waters. In the event of refusal by the person in question to transport the property, the inspector or protector must take appropriate steps to effect such transportation. The steps may include seizure of any conveyance or vessel of the person refusing to transport the property. Where a conveyance or vessel is seized, it is to be safeguarded by the inspector or protector seizing it pending trial and it becomes subject to the orders of the court. Such transportation costs as may be borne by the Department or by the Commission, as the case may be, may be collected by the agency from the proceeds of the sale of any other property of the defendant seized and sold in accordance with the provisions of this section.

Except as provided in subsection (g), where the seizure consists of edible fish which is not alive, may not live, or may not otherwise benefit conservation objectives if again placed on public grounds or in public waters, the inspector or protector must dispose of the property by turning it over to one or more appropriate public or charitable or nonprofit agencies or institutions, in accordance with the directions of his administrative superiors.

(e) Except as otherwise specifically provided in this section, all property seized must be safeguarded pending trial by the inspector or protector initiating the prosecution. Upon a conviction the property seized in connection with the offense in question is subject to the disposition ordered by the court. Upon an acquittal, property seized must be returned to the defendant or established owner, except:

(1) Where the property was summarily disposed of in accordance with subsection (d);

(2) Where possession of the property by the person to whom it otherwise would be returned would constitute a crime; and

(3) Where the property seized has been sold in accordance with subsection (g). In this event the net proceeds of the sale must be returned to the defendant or established owner, as the case may be.

Where property seized summarily under subsection (d) is not available for return, an acquitted defendant or established owner is entitled to no compensation where there was probable cause for the action taken.

In safeguarding property seized pending trial, an inspector or protector is authorized in his discretion, subject to orders of his administrative superiors, to make his own provisions for storage or safekeeping or to deposit the property with the sheriff of the county in which the trial is to be held for custody pending trial. In the event the mode of safekeeping reasonably selected by the inspector or protector entails a storage or handling charge, such charge is to be paid as follows:

(1) By the defendant if he is convicted but the court nevertheless orders the return of the property to the defendant;

(2) From the proceeds of the sale of the property if the property is sold under court order or in accordance with the provisions of this section; or

(3) By the Department or by the Commission, as the case may be, if no other provision for payment exists.

(f) Subject to orders of his administrative superiors, an inspector or protector in his discretion may leave property which he is authorized to seize in the possession of the defendant with the understanding that such property will be subject to the orders of the court upon disposition of the case. Willful failure or inexcusable neglect of the defendant to keep such property subject to the orders of the court is a misdemeanor punishable in the discretion of the court. In exercising his discretion, the inspector or protector should not permit property to be retained by the defendant if there is any substantial risk of its being used by the defendant in further unlawful activity.

(g) Where a prosecution involving seized saleable fish is pending and such fish are perishable or seasonal, the inspector or protector may apply to the court in which the trial is pending for an order permitting sale prior to trial. As used in this subsection, seasonal fish are those which command a higher price at one season than at another so that economic loss may occur if there is a delay in the time of sale. When ordered by the court, such sale prior to trial must be conducted in accordance with the order of the court or in accordance with the provisions of this section. The net proceeds of such sale are to be deposited with the court and are subject to the same disposition as would have been applicable to other types of property seized. Where sale is not lawful or otherwise not practicable or where prosecution is not pending, disposal of the fish is in accordance with subsection (d).

(h) Pending trial, the defendant or the established owner of any nonperishable and nonconsumable property seized may apply to the court designated to try the offense for return of the property. The property must be returned pending trial if:

(1) The court is satisfied that return of the property will not facilitate further violations of the law; and

(2) The claimant posts a bond for return of the property at trial in an amount double the value of the property as assessed by the court.

(i) Upon conviction of any defendant for a violation of the laws or regulations administered by the Department or the Commission under the authority of this subchapter, the court in its discretion may order seizure and sale of all weapons, equipment, vessels, conveyances, fish, and other evidence, fruits, and instrumentalities of the offense in question—whether or not seized or made subject to the orders of the court pending trial. The defendant may appeal the reasonableness of any order of seizure and sale. Unless otherwise specified in the order of the court, such sales are to be held by the Department or by the Commission, as the case may be.

The Board and the Commission may by regulation provide for an orderly public sale procedure of property which it may sell under the provisions of this section. Such procedure may include turning the property to be sold over to some other agency for sale, provided that the provisions of subsection (j) are complied with and there is proper accounting for the net proceeds of the sale. In the case of property unlikely to sell for a sufficient amount to offset the costs of sale, the Board and Commission may provide for destruction of the property.

(j) Except as provided in subsection (d), in the case of property seized under the provisions of subsection (c) or in any case where it appears that a person not a defendant has an interest in any property to be sold, destroyed, or otherwise disposed of, the Board and the Commission must provide for public notice of the description of the property and the circumstances of its seizure for a sufficient period prior to the time set for sale or other disposition to allow innocent owners or lienholders to assert their claims. The validity of such claims are to be determined by the trial court in the event there is or has been a prosecution in connection with the seizure of the property. Where there has been no prosecution, the validity of such claims must be determined by the Commissioner or by the Executive Director, as the case may be. Where there has been a sale under subsection (g), the provisions of this subsection apply to the net proceeds of the sale.

(k) Except as provided in subdivision (e) (3) and subsection (j), the net proceeds of all sales made pursuant to this section must be deposited in the school fund of the county in which the property was seized. (1915, c. 84, s. 6; 1917, c. 290, s. 2; C. S., s. 1885; 1935, c. 118; 1953, c. 1134; 1957, c. 1423, s. 2; 1961, c. 1189, s. 4; 1965, c. 957, s. 2.)

§ **113-138. Enforcement jurisdiction of special officers.**—The Board and the Commission by regulation may confer law-enforcement powers over matters within their jurisdiction upon the employees of any local, State, or federal public agency who possess special law-enforcement jurisdiction that would not otherwise extend to the subject matter of this subchapter. The Board and Commission may confer such powers or not to any particular officers or class of officers as may be convenient or desirable in the interests of conservation of marine and estuarine and wildlife resources. Such conferring of powers does not constitute the appointment of any such special enforcement officer to an additional office and no oath need be taken. (1965, c. 957, s. 2.)

§§ **113-139 to 113-150:** Reserved for future codification purposes.

ARTICLE 14.

Commercial and Sports Fisheries Licenses and Taxes.

§ **113-151. Regulations of Board; compensation of license agents.**—The Board is authorized to make reasonable rules and regulations governing the administration and enforcement of all license requirements and taxes prescribed in this article. In the event license agents are utilized for the issuance of any license, such agents may be compensated not in excess of five percent (5%) of the license fees collected. (1965, c. 957, s. 2.)

§ **113-152. Licensing of vessels; fees.**—(a) The following vessels are subject to the licensing requirements of this section:

(1) All vessels engaged in commercial fishing operations in coastal fishing waters and

(2) All North Carolina vessels engaged in commercial fishing operations without the State which result in landing and selling fish in North Carolina. North Carolina vessels are those which have their primary situs in North Carolina. Motorboats with North Carolina numbers under the provisions of chapter 75A of the General Statutes are deemed to have their primary situs in North Carolina; documented vessels which list a North Carolina port as home port are deemed to have their primary situs in North Carolina.

"Commercial fishing operations" are all operations preparatory to, during, and subsequent to the taking of fish:

(1) With the use of commercial fishing equipment or

(2) By any means, if a primary purpose of the taking is to sell the fish.

It is unlawful for the owner of a vessel subject to licensing requirements to permit it to engage in commercial fishing operations without having first procured the appropriate license. It is unlawful for any one to command such a vessel engaged in commercial fishing operations without complying with the provisions of this section and of regulations made under the authority of this article. It is unlawful for anyone to command such a vessel engaged in commercial fishing operations that does not meet the license requirements of this article or of regulations made under the authority of the article, or without making reasonably certain that all persons on board are in compliance with the provisions of this article and regulations made under the authority of this article. It is unlawful to participate in any commercial fishing operation in connection with which there is a vessel subject to licensing requirements not meeting the licensing requirements under the provisions of this article or of regulations made under the authority of this article.

(b) Any license that may be required by this section is to be issued in the name of the owner of the vessel. It is unlawful for the owner to permit anyone who is not eligible to have the license issued to him in his own right to command such licensed vessel for the purpose of engaging in commercial fishing operations. It is unlawful for such an ineligible person to command a licensed vessel for such purposes. The license application for a menhaden vessel must state the name of the person in command of the vessel. Upon change in command of a menhaden vessel, the owner must notify the Commissioner within fifteen days. Upon change in ownership of any licensed vessel, the new owner must notify the Commissioner within fifteen days. The Board may provide by regulation for replacement of lost license plates upon tender of the original license receipt or upon such other evidence as the Board may deem sufficient. A fee not to exceed fifty cents (50¢) may be charged for replacement of a plate.

(c) Licenses are issued annually upon a calendar year basis for vessels of various lengths and types as follows for the fees indicated:

(1) Vessels without motors, one dollar ($1.00).
(2) Vessels with motors not over eighteen feet in length, three dollars ($3.00).
(3) Vessels with motors over eighteen feet but not over twenty-six feet in length, fifty cents (50¢) per foot.
(4) Vessels with motors over twenty-six feet in length, seventy-five cents (75¢) per foot.
(5) Vessels engaged in menhaden fishing, as prescribed in subsection (d).

Length is measured from end to end over the deck excluding sheer.

(d) Vessels engaging in menhaden fishing are subject to the following license and fee requirements:

(1) For the mother ship, one dollar and sixty cents ($1.60) per ton, gross tonnage, customhouse measurements.
(2) For each purse boat carrying a purse seine used in connection with a licensed mother ship, no license required.

(e) Unless otherwise indicated, all licenses in this article expire on December 31 of each year and are subject to the full license fee regardless of when issued. (1953, c. 1134; 1955, c. 888, ss. 1, 3; 1961, c. 1004; 1965, c. 957, s. 2.)

§ 113-153. Vessels fishing beyond territorial waters.—Persons aboard vessels not having their primary situs in North Carolina which are carrying a cargo of fish taken outside the waters of North Carolina may land and sell their catch in North Carolina either by complying with the licensing provisions of § 113-152 with respect to the vessel in question or by complying, if eligible, with the provisions of § 113-155. The Board may by regulation modify the licensing procedure set out in § 113-152 in order to devise an efficient and convenient procedure for licensing out-of-state vessels after landing in order to permit sale of cargo. Provided, that persons aboard vessels having a primary situs in a jurisdiction that would allow North Carolina vessels without restriction to land and sell their catch, taken outside such jurisdiction, may land and sell their catch in North Carolina without complying with this section. (1965, c. 957, s. 2.)

§ **113-154. Oyster and clam licenses.**—(a) In addition to all other license requirements, every individual engaged in taking oysters or clams from the public or private grounds of North Carolina for commercial use by any means whatever must have first procured an individual oyster and clam license.

(b) It is unlawful for any individual to take oysters or clams from the public or private grounds of North Carolina without having ready at hand for inspection a current and valid oyster and clam license issued to him personally and bearing his correct name and address. It is unlawful for any such individual taking or possessing freshly taken oysters or clams to refuse to exhibit his license upon the request of an officer authorized to enforce the fishing laws.

(c) Oyster and clam licenses are issued annually on a calendar year basis upon payment of a fee of one dollar ($1.00) upon proof that the license applicant is a resident of North Carolina.

(d) In the event an individual possessing an oyster and clam license changes his name or address or receives one erroneous in this respect, he must within fifteen days surrender the license for one bearing the correct name and address. An individual prosecuted for failure to possess a valid license is exonerated if he can show that the invalidity consisted solely of an incorrect name or address appearing in a license to which he was lawfully entitled and that the erroneous condition had not existed for longer than fifteen days.

(e) It is unlawful for an individual issued an oyster and clam license to transfer or offer to transfer his license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure an oyster or clam license from a source not authorized by the Department. (1903, c. 516, s. 6; Rev., s. 2386; C. S., s. 1934; 1953, c. 1134; 1955, c. 888, s. 1; 1965, c. 957, s. 2.)

§ **113-155. Licenses to land and sell fish.**—(a) Except as otherwise provided in this article, it is unlawful for any person to sell fish, no matter where or how taken, to a fish dealer required to be licensed under this article unless the fish were taken lawfully and unless:

(1) He has a current and valid license to land and sell fish issued to him personally and has received less than two hundred dollars ($200.00) on account of the sale of fish within the last twelve months; or

(2) The fish were taken in a commercial fishing operation meeting all licensing requirements, and he was a party to the operation; or

(3) The fish were taken by him, whether by sport or commercial methods, through the use of a vessel currently and validly licensed under § 113-152; or

(4) The fish were taken by him in inland fishing waters in conformity with laws and regulations administered by the Commission and are of a type permitted to be sold by the Commission; or

(5) He is a licensed fish dealer.

(b) In the case of oysters or clams a license to land and sell is not required, but the person selling must satisfy the dealer that he took them or participated in the taking, that he then had a current and valid oyster and clam license issued to him personally, and that the oysters or clams were taken lawfully. In the event the person selling is a dealer, he must satisfy the purchasing dealer that the oysters or clams were acquired in conformity with law.

(c) Dealers purchasing fish must record such information relating to purchases as required by the Board to implement the provisions of this section.

(d) Annual licenses to land and sell are issued on a calendar year basis to individual residents and nonresidents upon payment of a fee of two dollars ($2.00).

(e) Any individual who receives in excess of two hundred dollars ($200.00) in cash or equivalent value within any twelve-month period on account of the sale of fish is not entitled to a license to land and sell. If not covered by any exemption from license requirements, he must comply with licensing provisions applicable to vessels (or secure compliance by the owner of any vessel that may be involved) or comply with licensing provisions applicable to dealers, as may be appropriate. The Board may implement this subsection by regulations clarifying which license is required in particular situations. In the event the taking of fish is done without the use of a vessel but the vessel license rather than the dealer license is the appropriate one, the Board may by regulation determine which vessel license may be applicable on the basis of amount or value of fish taken and the average size of vessels ordinarily used to take such quantity or value of fish.

(f) It is unlawful for an individual issued a license to land and sell to transfer or offer to transfer his license, either temporarily or permanently, to another. It is unlawful for an individual to secure or attempt to secure an oyster and clam license from a source not authorized by the Department. (1965, c. 957, s. 2.)

§ 113-156. Licenses for fish dealers.—(a) Except as otherwise provided in this article, every person who sells fish or has any connection whatever with fish that results in his enrichment is a fish dealer, provided that individual employees of fish dealers are not fish dealers merely by virtue of transacting the business of their employers.

(b) The Board may make reasonable regulations to implement this section by clarifying the status of particular classes of persons as regards fish dealerships. Persons all of whose dealings with a category of fish fall under one or more of the following headings are not fish dealers as respects that category:

(1) Persons whose dealings in fish are primarily educational, scientific, or official. Scientific, educational, or official agencies may sell fish harvested or processed in connection with research or demonstration projects without being deemed dealers, but such sales are subject to such reasonable regulations as the Board may make governing such sales.

(2) Individuals selling legally acquired fish other than oysters and clams to individuals other than dealers on a casual, noncommercial basis, provided that such sales do not net in excess of five hundred dollars ($500.00) in cash or equivalent value in any twelve-month period. Any public offer to sell, or peddling of fish, is deemed commercial.

(3) Fishermen who sell their catch exclusively to licensed dealers in accordance with § 113-155.

(c) Every fish dealer is subject to the licensing requirements of this section unless all fish handled within any particular licensing category meet one or more of the following requirements:

(1) The fish are shipped to him by a dealer from without the State.

(2) The fish are nongame fish taken in inland fishing waters.

(3) The fish are of a kind the sale of which is regulated exclusively by the Commission.

(4) The fish are purchased from a licensed dealer.

In the event the seller is a licensed fish dealer, he must satisfy any purchasing fish dealer, whether licensed or unlicensed, that the fish were acquired in conformity with law. It is unlawful for a fish dealer to purchase or sell or in any manner deal in fish except in conformity with the provisions of this section.

(d) Every fish dealer subject to the licensing provisions of this section must secure a separate license or set of licenses for each established location. Where a dealer does not have an established location for transacting the fisheries business within the State, the license application must be denied unless the applicant satisfies the Commissioner that his residence, or some other office or address, within the State, is a suitable substitute for an established location and that records kept in connection with licensing, sale, and tax requirements will be available for inspection when necessary.

(e) Every fish dealer subject to licensing requirements must secure an annual license at each established location for each of the following activities transacted there, upon payment of the fee set out:

(1) Dealing in shellfish:
  a. Shucker-packer (including sale of shell stock), twenty-five dollars ($25.00).
  b. Shell stock shipper, ten dollars ($10.00).
(2) Dealing in hard and soft crabs:
  a. Crab processor (including dealing in unprocessed crabs), ten dollars ($10.00).
  b. Unprocessed crab dealer, five dollars ($5.00).
(3) Dealing in shrimp, ten dollars ($10.00).
(4) Dealing in finfish, ten dollars ($10.00).
(5) Operating menhaden processing plant, one hundred dollars ($100.00).
(6) Operating any other fish dehydrating or oil extracting plant, fifty dollars ($50.00).

Any person subject to fish-dealer licensing requirements who deals in fish not included in the above categories must secure a finfish dealer license. The Board may make reasonable regulations implementing and clarifying the dealer categories of this subsection. (1903, c. 516, s. 9; Rev., s. 2395; 1915, c. 136, s. 1; C. S., s. 1935; 1953, c. 1134; 1965, c. 957, s. 2.)

§ 113-157. Taxes on seafood.—(a) Taxes are due and payable to the Department from fish dealers required to be licensed upon delivery to them of any seafood listed in this section taken within the State, whether from public or private grounds, unless accompanied by evidence that the tax levied by this section has already been assessed. The Board may make reasonable regulations governing the administration, assessment, and collection of the seafood tax.

(b) In the event the fish dealer required to be licensed is also the fisherman taking the taxable seafood, the Board may make reasonable regulations fixing the point at which the seafood tax becomes due and payable.

(c) In the event that the Board authorizes a self-assessment method of collecting all or any part of the seafood tax, upon forms furnished to dealers by the Department, all taxes assessed are payable at all times on demand of any inspector or other authorized agent of the Department. If the Commissioner becomes satisfied that any dealer granted the privilege of self-assessment has substantially obstucted the efficient and equitable administration of the provisions of this article, either willfully or through inexcusable neglect, the Commissioner may order the dealer's self-assessment privilege terminated. Termination may not exceed ten days upon the first occasion. Upon the second occasion, the period of termination may not exceed thirty days. Upon the third or any subsequent occasion, the Commissioner may terminate the self-assessment privilege indefinitely subject to reinstatement in his discretion. If the Commissioner determines that termination of the privilege is likely to aggravate rather than reduce obstruction, he should employ other methods designed to secure compliance with laws, regulations, and reasonable requests of agents of the Department designed to produce equitable and efficient administration and enforcement of the provisions of this article.

(d) The following taxes are applicable to the seafood named below:

(1) Oysters, eight cents (8¢) per bushel.
(2) Clams, six cents (6¢) per bushel.
(3) Scallops, five cents (5¢) per gallon.
(4) Soft crabs, two cents (2¢) per dozen.

(5) Hard crabs, ten cents (10¢) per one hundred pounds.

(6) Shrimp, green, heads off, fifteen cents (15¢) per one hundred pounds.

An additional tax of fifty cents (50¢) per bushel is levied upon all oysters taken in North Carolina which are shipped in the shell to any place outside the State.

(e) In the event the Board authorizes a self-assessment method of collecting all or any part of the seafood tax, all records and accounts required to be kept by the Department must be kept in a safe place and reasonable efforts must be made to preserve them from loss or destruction. If it becomes impossible to determine the amount of tax assessed for any period owing to loss or destruction of records or accounts, failure to make proper entries, or other fault of the dealer, an agent of the Department must reconstruct the approximate tax payable based upon previous sales in similar periods, the general condition of the market for the time in question, and other relevant information. The tax to be assessed for such period includes a one hundred percent (100%) penalty and is double the reconstructed figure. It is unlawful for any fish dealer to fail to remit upon demand of an authorized agent of the Department all taxes and penalties due. If any dispute arises as to the accuracy of the reconstructed figure, the dealer must bear the burden of showing it to be inaccurate. The dealer may appeal the reconstructed amount to the Commissioner and, if dissatisfied, to the Board. The decision of the Board is final. In the event of appeal, the dealer must pay the reconstructed tax plus penalty under protest. (1947, c. 1000, s. 2; 1953, c. 175, s. 2; c. 1134; c. 1153, ss. 1, 2; 1965, c. 957, s. 2.)

§ 113-158. Transplanting or holding seafood; when seafood taxes due; permits to transplant oysters or clams.—(a) Where a fish dealer acquires taxable live seafood and transfers it to private beds, holding ponds, fish boxes or traps, or otherwise in the waters of this State with the purpose of harvesting the seafood at a subsequent time, the tax becomes due and payable at the time of harvest. The Board may regulate such operations and require that such notice be given inspectors and that such records be kept as will minimize the risk of illicit traffic in taxable seafood under the cover of these operations. If as to any particular type of operation, regulation and inspection is made more efficient and equitable through the assessment of the tax at an earlier stage than that prescribed above, the Board may by regulation declare the tax due and payable at the earlier stage.

(b) The Board may require that special permits be secured in advance by all persons, whether dealers or otherwise, prior to transplanting oysters or clams. (1965, c. 957, s. 2.)

§ 113-159. Contribution of oyster shells.—All persons required to secure shellfish dealers' licenses must set aside and accumulate for the Department fifty percent (50%) of the oyster shells which come into their possession, or a lesser fractional amount of the total as set by the Board. Such fractional amount must not be more than half of the shells acquired within any calendar year, without regard to whether the oysters were taken from public or private beds or within the State or without. The Commissioner should collect the shells accumulated at least annually and in his discretion may do so more frequently, but he may decline to accept the contribution of shells from any dealer in the event he finds collection to be uneconomical or unfeasible. (1947, c. 1000, s. 2; 1953, c. 175, s. 2; c. 1153, ss. 1, 2; 1965, c. 957, s. 2.)

§ 113-160. Exportation and importation of fish and equipment.—The Board may make reasonable regulations governing the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of North Carolina. Such regulations may regulate, license, prohibit, or restrict importation into the State and exportation from the State of any and all species of fish which are native to coastal fishing waters or which may thrive if introduced into such waters. (1947, c. 1000, s. 2; 1953, c. 175, s. 2; c. 1153, ss. 1, 2; 1965, c. 957, s. 2.)

§ 113-161. Reciprocal agreements.—Upon recommendation of the Commissioner, the Director may make reciprocal agreements with other jurisdictions to authorize persons licensed in such other jurisdictions to exercise licensed privileges within this State upon such terms and conditions that may be agreed on as mutually beneficial, provided that such jurisdictions accord privileges of similar nature or value to holders of North Carolina licenses. (1965, c. 957, s. 2.)

§ 113-162. Fraud or deception as to licenses, taxes or records.—It is unlawful to falsify, or to practice any fraud or deception designed to evade the provisions of this article or of regulations made under the authority of this article in connection with:

(1) Any licenses authorized in this article;
(2) Any tax receipts or other evidence that the tax has been assessed on seafood or that the seafood is not subject to tax; or
(3) Any records required to be kept under the provisions of this article or of regulations made under the authority of this article. (1965, c. 957, s. 2.)

§ 113-163. Record-keeping requirements.—(a) The Department may require all licensees under this article to keep and to exhibit upon the request of an authorized agent of the Department such records and accounts as may be necessary to the equitable and efficient administration and enforcement of this article. In addition, licensees may be required to keep additional information of a statistical nature or relating to location of catch as may be needed to determine conservation policy. Records and accounts required to be kept must be preserved for inspection for not less than three years.

(b) It is unlawful for any licensee to refuse or to neglect without justifiable excuse to keep such records and accounts as may be reasonably required. The Department may distribute forms to licensees to aid in securing compliance with its requirements, or it may inform licensees of requirements in other effective ways such as distributing memoranda and sending agents of the Department to consult with licensees who have been remiss. Detailed forms or descriptions of records, accounts, collection and inspection procedures, and the like which reasonably implement the objectives of this article need not be embodied in regulations of the Board in order to be validly required. (1953, c. 1134; 1961, c. 1189, s. 3; 1965, c. 957, s. 2.)

§ 113-164. Regulations as to possession, transportation and disposition of seafood.—The Board may make reasonable regulations governing possession, transportation, and disposition of the seafood listed in § 113-157 (d) by all persons, including those not subject to fish dealer licensing and tax requirements, in order that inspectors may adequately distinguish the taxable seafood from that not subject to tax and equitably and efficiently enforce the provisions of this article. Such regulations may include requirements as to giving notice, filing declarations, securing permits, marking packages, and the like. (1965, c. 957, s. 2.)

§ 113-165. Violations with respect to taxable seafood and coastal fisheries products.—It is unlawful to take, possess, transport, process, sell, buy, offer or attempt to buy, or in any way deal in either seafood made taxable in this article or coastal fisheries products without conforming with the provisions of this article or of regulations made under the authority of this article. (1961, c. 1189, s. 2; 1965, c. 957, s. 2.)

§ 113-166. Suspension, revocation and reissuance of licenses..—(a) Upon receipt of reliable notice that a person licensed under this article has had imposed against him a conviction of a criminal offense within the jurisdiction of the Department under the provisions of this subchapter or of regulations of the Board adopted under the authority of this subchapter, the Commissioner must suspend or revoke all licenses held by such person in accordance with the terms of this section. Reliable notice includes information furnished the Commissioner in prosecution or other reports from inspectors. As used in this section, a conviction includes a plea of guilty or nolo contendere, any other termination of a criminal prosecution unfavorably to the defendant after jeopardy has attached, or any substitute for criminal prosecution whereby the defendant expressly or impliedly confesses his guilt. In particular, procedures whereby bond forfeitures are accepted in lieu of proceeding to trial and cases indefinitely continued upon arrest of judgment or prayer for judgment continued are deemed convictions. The Commissioner may act to suspend or revoke licenses upon the basis of any conviction in which:

(1) No notice of appeal has been given; or

(2) The time for appeal has expired without an appeal having been perfected; or

(3) The conviction is sustained on appeal. Where there is a new trial, finality of any subsequent conviction will be determined in the manner set out above.

(b) The Commissioner must initiate an administrative procedure designed to give him systematic notice of all convictions of criminal offenses by licensees covered by subsection (a) above and keep a file of all such convictions reported to him. Upon receipt of notice of such conviction, the Commissioner must determine whether it is a first, a second, a third, or a fourth or subsequent conviction of some offense covered by subsection (a). In the case of second convictions, the Commissioner must suspend all licenses issued to the licensee for a period of ten days. In the case of third convictions, the Commissioner must suspend all licenses issued to the licensee for a period of thirty days. In the case of fourth or subsequent convictions, the Commissioner must revoke all licenses issued to the licensee. Where several convictions result from a single transaction or occurrence, they are to be treated as a single conviction so far as suspension or revocation of the licenses of any licensee is concerned. Anyone convicted of taking or of knowingly possessing, transporting, buying, selling, or offering to buy or sell oysters or clams from areas closed because of suspected pollution will be deemed by the Commissioner to have been convicted of two separate offenses on different occasions for license suspension or revocation purposes.

(c) Where a license has been suspended or revoked, the former licensee is not eligible to apply for reissuance of license or for any additional license authorized in this article during the suspension or revocation period. Licenses must be returned to the licensee by the Commissioner or his agents at the end of a period of suspension. Where there has been a revocation, application for reissuance of license or for an additional license may not be made until six months following the date of revocation. In such case of revocation, the eligible former licensee must satisfy the Commissioner that he will strive in the future to conduct the operations for which the license is sought in accord with all applicable laws and regulations. Upon the application of an eligible former licensee after revocation, the Commissioner in his discretion may issue one license sought but not another, as he deems it necessary to prevent the hazard of recurring violations of the law.

(d) Upon receiving reliable information of a licensee's conviction of a second or subsequent criminal offense covered by subsection (a), the Commissioner must promptly cause the licensee to be personally served with written notice of suspension or revocation, as the case may be. The written notice may be served upon any responsible individual affiliated with the corporation, partnership, or association where the licensee is not an individual. The notice of suspension or revocation may be served by an inspector or other agent of the Department, must state the ground upon which it is based, and takes effect immediately upon personal service. The agent of the Commissioner making such service must then or subsequently, as may be feasible under the circumstances, collect all license certificates and plates and other forms or records relating to the license as directed by the Commissioner. It is unlawful for any licensee willfully to evade the personal service prescribed in this subsection.

(e) Licensees served with notices of suspension or revocation may appeal in writing to the Commissioner on the question of whether or not they were in fact subjected to final convictions in the proceedings forming a basis for their license suspension or revocation. The license remains revoked or suspended, after personal service, pending appeal to the Commissioner. The Commissioner must hear the evidence of the licensee as promptly as may be feasible and either cancel or continue in effect the suspension or revocation order. The decision of the Commissioner as to imposition of suspension or revocation is the final administrative determination.

(f) In the event the Commissioner refuses to reissue the license of or issue an additional license to an eligible former licensee after revocation, the former licensee may appeal the decision of the Commissioner to the Director and, if dissatisfied, to the Board. In the event the decision not to issue the license is upheld, the former licensee must wait an additional six months before again applying to the Commissioner for issuance or reissuance of any license.

(g) The Board may by regulation provide for disclosure of the identity of any individual or individuals in responsible positions of control respecting operations of any licensee that is not an individual. For the purposes of this section, individuals in such responsible positions of control are deemed to be individual licensees and subject to suspension and revocation requirements in regard to any applications for license they may make—either as individual or as persons in responsible positions of control in any corporation, partnership, or association. In the case of individual licensees, the individual applying for a license or licensed under this article must be the real party in interest.

(h) In determining whether a conviction is a second or subsequent offense under the provisions of this section, the Commissioner may not consider convictions for:

(1) Offenses which occurred prior to the effective date of this article; or

(2) Offenses which occurred more than three years prior to the time of the latest offense the conviction for which is in issue as a subsequent conviction. (1953, c. 1134; 1961, c. 1189, ss. 4, 9; 1965, c. 957, s. 2.)

Editor's Note.—As to the effective date of this article, see Editor's Note to § 113-127.

§§ **113-167 to 113-180:** Reserved for future codification purposes.

ARTICLE 15.

Regulation of Coastal Fisheries.

§ **113-181. Duties and powers of Department.**—(a) It is the duty of the Department to administer and enforce the provisions of this subchapter pertaining to the conservation of marine and estuarine resources. In execution of this duty, the Department may collect such statistics, market information, and research data as is necessary or useful to the promotion of sports and commercial fisheries in North Carolina and the conservation of marine and estuarine resources generally; conduct or contract for research programs or research and development programs applicable to resources generally and to methods of cultivating, harvesting, marketing, or processing fish as may be beneficial in achieving the objectives of this subchapter; enter into reciprocal agreements with other jurisdictions with regard to the conservation of marine and estuarine resources; and regulate placement of nets and other sports or commercial fishing apparatus in coastal fishing waters with regard to navigational and recreational safety as well as from a conservation standpoint.

(b) The Department is directed to make every reasonable effort to carry out the duties imposed in this subchapter. The Board may make regulations as necessary to implement the work of the Department in carrying out such duties. (1915, c. 84, s. 5; 1917, c. 290, s. 10; C. S., s. 1883; 1953, c. 1086; 1965, c. 957, s. 2.)

§ 113-182. Regulation of fishing and fisheries.—(a) The Board is authorized to authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:

(1) Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish;

(2) Seasons for taking fish;

(3) Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(b) The Board is authorized to authorize, license, regulate, prohibit, prescribe, or restrict:

(1) The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Department; and

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Department in carrying out its duties. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., s. 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1251; 1961, c. 1189, s. 1; 1963, c. 1097, s. 1; 1965, c. 957, s. 2.)

§ 113-183. Unlawful possession, transportation and sale of fish.—(a) It is unlawful to possess, transport, offer to transport, sell, offer to sell, receive, buy, or attempt to buy any fish regulated by the Department with knowledge or reason to believe that such fish are illicit.

(b) Fish are illicit when taken, possessed, or dealt with unlawfully, or when there has occurred at any time with respect to such fish a substantial failure of compliance with the applicable provisions of this subchapter or of regulations made under the authority of this subchapter. (1961, c. 1189, s. 2; 1965, c. 957, s. 2.)

§ 113-184. Possession and transportation of prohibited oyster equipment.—(a) It is unlawful to carry aboard any vessel subject to licensing requirements under article 14 under way or at anchor in coastal fishing waters during the regular closed oyster season any scoops, scrapes, dredges, or winders such as are usually or can be used for taking oysters.

(b) If any vessel has recently been under way or at anchor in coastal fishing waters engaged in activity similar in manner to that in which oysters are taken with scoops, scrapes, or dredges and at a time or place in which the taking of oysters is prohibited, the presence on board of the vessel of wet oysters or scoops, scrapes, dredges, lines, or deck wet, indicating the taking of oysters, constitutes prima facie evidence that the vessel was engaged in taking oysters unlawfully with scoops, scrapes, or dredges at the time or place prohibited.

(c) It is unlawful to carry aboard any vessel subject to licensing requirements under article 14 under way or at anchor in coastal fishing waters any dredge weighing more than one hundred pounds. (1903, c. 516, ss. 13-15, 28; Rev., ss. 2385, 2397; C. S., s. 1926; 1963, c. 452; 1965, c. 957, s. 2.)

§ **113-185. Fishing near ocean piers; trash or scrap fishing.**—(a) It is unlawful to fish in the ocean within 750 feet of an ocean pier except:

(1) From the pier or
(2) By means of surf casting.

This prohibition shall be effective whether or not the pier owner places in the area of his pier and at his own expense buoys located in accordance with directives of the Commissioner to indicate clearly to fishermen in vessels and on the beach the requisite distance of 750 feet from the pier.

(b) It is unlawful to engage in any fishing operations known as trash fishing or scrap fishing. "Trash fishing" or "scrap fishing" consists of intentionally taking the young of edible fish before they are of sufficient size to be of value as individual food fish:

(1) For commercial disposition as bait; or
(2) For sale to any dehydrating or nonfood processing plant; or
(3) For sale or commercial disposition in any manner other than for human consumption.

The Board may by regulation authorize the disposition of the young of edible fish taken incidentally and unavoidably in connection with legitimate commercial fishing operations, provided that the quantity of such fish that may be disposed of is sufficiently limited, or the taking and disposition is otherwise so regulated, as to discourage any practice of trash or scrap fishing for its own sake. (1965, c. 957, s. 2.)

§ **113-186. Measures for fish scrap and oil.**—All persons buying or selling menhaden for the purpose of manufacturing fish scrap and oil within the State must buy or sell according to the measure prescribed in this section: Twenty-two thousand cubic inches for every one thousand fish. Each day of failure to use the prescribed measure constitutes a separate offense. (1911, c. 101; C. S., s. 1963; 1965, c. 957, s. 2.)

§ **113-187. Penalties for violations of article and regulations.**—(a) It is unlawful for any person to participate in any commercial fishing operation conducted in violation of any provision of this article and its implementing regulations or in any operation in connection with which any vessel is used in violation of any provision of this article and its implementing regulations.

(b) Any owner of a vessel who knowingly permits it to be used in violation of any provision of this article and its implementing regulations is guilty of a misdemeanor punishable in the discretion of the court.

(c) Any person in charge of a commercial fishing operation conducted in violation of any provision of this article and its implementing regulations or in charge of any vessel used in violation of any provision of this article and its implementing regulations is guilty of a misdemeanor punishable in the discretion of the court. (1965, c. 957, s. 2.)

§ **113-188. Additional regulations authorized.**—The setting out of particular offenses or requirements with regard to specific species of fish or with regard to certain types of equipment does not affect the authority of the Board to make similar additional regulations not in conflict with the provisions of this article under authority granted in this chapter. (1965, c. 957, s. 2.)

§§ **113-189 to 113-200:** Reserved for future codification purposes.

ARTICLE 16.

Cultivation of Oysters and Clams.

§ **113-201. Authority of Board.**—The Board is empowered to make regulations and take all steps necessary to develop and improve the cultivation, harvesting, and marketing of oysters and clams in North Carolina both from public grounds and private beds. (1921, c. 132, s. 1; C. S., s. 1959(a); 1965, c. 957, s. 2.)

§ **113-202. Existing and new or renewed oyster and clam leases.**—(a) Except as indicated below, all oyster and clam leases heretofore granted are subject to the provisions of this article. All oyster and clam leases renewed under the provisions of the former law are terminated upon the first day of April next following the effective date of this article, subject to the right to renewal of lease in conformity with the provisions of this article, upon the application of the lessee. All initial oyster and clam leases under the provisions of the former law more than fifteen years old but not more than twenty years old are terminated on the first of April one year next following the effective date of this article, subject to the right to renewal of lease in conformity with the provisions of this article, upon the application of the lessee. All initial oyster and clam leases under the provisions of the former law more than ten years old but not more than fifteen years old are terminated on the first day of April two years next following the effective date of this article, subject to the right to renewal of lease in conformity with the provisions of this article, upon the application of the lessee. All initial oyster and clam leases under the provisions of the former law not more than ten years old upon the effective date of this article are terminated at noon on the first day of April following the tenth anniversary of the granting of the lease and are subject to renewal in accordance with the provisions of this article. Except as otherwise provided in this article or in regulations of the Board implementing the orderly transition from the provisions of the former law to that in this article, the provisions of this article and its implementing regulations apply to all oyster and clam leases within the State. Rental amounts prescribed in this article apply to all leases granted under the provisions of previous legislation, effective the first day of April next following the effective date of this article.

(b) In order to encourage oyster and clam culture in North Carolina, the Board, upon the recommendation of the Commissioner, may lease to residents any of the public bottoms underlying coastal fishing waters which do not contain a natural oyster or clam bed, in accordance with the provisions of this article. A natural oyster or clam bed is an area of public bottom where oysters or clams are to be found growing in sufficient quantities to be valuable to the public.

(c) The area leased may not be less than one acre nor more than fifty acres, except that in the open waters of Pamlico Sound leases may not be less than five acres nor more than two hundred acres. For the purposes of this section, the open waters of Pamlico Sound are those waters more than two miles from the shoreline.

(d) No person may lease more than a total of fifty acres of public bottom outside the open waters of Pamlico Sound. In no event may any person lease more than a total of two hundred acres within the State.

(e) Any person desiring to apply for a lease or renewal of a lease must make written application to the Commissioner on forms prepared by him containing such information as deemed necessary to determine the desirability of granting or not granting the lease requested. The application must be accompanied by a survey, made at the expense of the applicant, showing the area proposed to be leased.

The survey must conform to standards prescribed by the Commissioner concerning accuracy of survey and the amount of detail that must be shown. If on the basis of the application information and survey the Commissioner deems that granting the lease would benefit the oyster and clam culture of North Carolina, the Commissioner, in the case of initial lease applications, must order an investigation of the bottom proposed to the [be] leased. The investigation is to be made by the Commissioner or his authorized agent and by a qualified assistant appointed by the board of county commissioners of the county in which the bottom, or the greater portion of the bottom, is located to determine whether there is a natural oyster or clam bed within the bounds of the proposed lease. In the event a natural oyster or clam bed is encountered, the Commissioner in his discretion may either recommend that the lease be denied or that it be amended so as to exclude such bed. In the event the Commissioner authorizes amendment of the application, the applicant must furnish a new survey meeting requisite standards showing the area proposed to be leased under the amended application. At the time of making application for an initial lease, the applicant must pay a filing fee of twenty-five dollars ($25.00). At the time of making application for a renewal lease, the applicant must pay a filing fee of ten dollars ($10.00).

(f) The area of bottom applied for in the case of an initial lease or amended initial lease must be as compact as possible, taking into consideration the shape of the body of water, the consistency of the bottom, and the desirability of separating the boundaries of a leasehold by a sufficient distance from any known natural oyster or clam bed to prevent the likelihood of disputes arising between the leaseholder and members of the public taking oysters or clams from the natural bed.

(g) Upon determination by the Commissioner that the results of the investigation, if required, are satisfactory and that the application for lease or renewal of lease and the accompanying survey are in order, and that the proper filing fee has been tendered, the Commissioner must within a reasonable time notify the applicant whether he recommends approval, disapproval, or modification of the lease application. In the event the Commissioner recommends approval or a modification to which the applicant agrees, the Commissioner must publish at least two notices of intention to lease in a newspaper of general circulation in the county or counties in which the proposed leasehold lies. The first publication must precede by more than thirty days the meeting of the Board at which the granting of the lease or renewal of lease is to be made; the second publication must follow the first by seven to eleven days. The notice of intention to lease must contain a sufficient description of the area of the proposed leasehold that its boundaries may be established with reasonable ease and certainty and must also contain the date of the meeting at which the Board is slated to act upon the application for lease or renewal of lease.

(h) Protests to the granting of the proposed lease or renewal of lease may be filed with the Commissioner in writing under oath prior to the granting of the lease by the Board. Protests cannot be considered unless accompanied by a filing fee of twenty-five dollars ($25.00). The Commissioner must evaluate the sufficiency of the grounds stated in the protest and make such investigation as he deems necessary. In the interest of making a just evaluation, he may recommend that the Board postpone consideration of the lease to a subsequent meeting. The Commissioner as a result of his evaluation may recommend denial or amendment of the lease or the granting of it in its original form, in the best interests of the oyster and clam culture of North Carolina, except that no lease may be granted which embraces a known or suspected natural oyster or clam bed. The lease applicant must furnish any additional or amended survey required in the event the protest results in a modification of the lease. In the event the protest does not prevail and the lease is granted in its original form, the twenty-five dollars ($25.00) deposited with the protest must be forfeited to the use of the Department. In the event the protest is successful in causing a denial or modification of the lease, the twenty-five dollar ($25.00) deposit must be returned to the person protesting.

(i) The Board in its discretion may lease or decline to lease public bottoms for oyster or clam culture in accordance with its duty to conserve the marine and estuarine resources of the State. The Commissioner must present all lease applications to the Board as to which he has published a notice of intention to lease more than thirty days prior to the meeting of the Board. In the event there was a protest that did not prevail before the Commissioner as to any lease recommended by him, the Commissioner must notify the Board of such protest. Persons whose lease applications are not recommended or are recommended in amended form by the Commissioner may appeal to the Board. In the event the Board sustains the appeal in whole or in part, it may order the Commissioner to take the steps necessary to comply with its decisions and effect a reprocessing of the lease application prior to the next Board meeting or such other time as it may direct.

(j) In the event of procedural delay upon an application for renewal of lease, the leaseholder having made timely application may continue in possession of the leasehold until a final decision is made by the Board either to grant, deny, or modify the renewal lease for which he applied. Renewal applications are timely if received by the Commissioner after January 1 and on or before April 1 in the year in which the lease is subject to renewal.

(k) After a lease is granted by the Board and the Director is satisfied that the survey submitted meets the Commissioner's criteria and that the filing fee and rent due in advance has been paid, the Director must execute the lease on forms approved by the Attorney General. The leaseholder must erect markers complying with regulations of the Board in order to define the bounds of the leased area.

(l) Initial leases begin upon the issuance of the lease by the Director and expire at noon on the first day of April following the tenth anniversary of the granting of the lease. Renewal leases are issued for a period of ten years effective from the time of expiration of the previous lease. The rental for initial leases is one dollar ($1.00) per acre until noon on the first day of April following the first anniversary of the lease. Thereafter, for initial leases, and from the beginning for renewal leases, the rental is five dollars ($5.00) per acre per year. Rental must be paid annually in advance prior to the first day of April each year. Upon initial granting of a lease, the pro rata amount for the portion of the year left until the first day of April must be paid in advance at the rate of one dollar ($1.00) per acre per year; then, on or before the first day of April next, the lessee must pay the rental for the next full year.

(m) Except as restricted by this subchapter, leaseholds granted under this section are to be treated as if they were real property and are subject to all laws relating to taxation, sale, devise, inheritance, gift, seizure and sale under execution or other legal process, and the like. Leases properly acknowledged and probated are eligible for recordation in the same manner as instruments conveying an estate in real property. Within fifteen days after transfer of beneficial ownership of all or any portion of or interest in a leasehold to another, the new owner must notify the Commissioner of such fact. Such transfer is not valid until notice is furnished the Commissioner. In the event such transferee is a nonresident, the Commissioner must initiate proceedings to terminate the lease.

(n) Upon receipt of notice by the Commissioner of any of the following occurrences, he must commence action to terminate the leasehold:

(1) Failure to pay the annual rent in advance.

(2) Failure to file information required by the Commissioner upon annual remittance of rental.

(3) Failure by new owner to report a transfer of beneficial ownership of all or any portion of or interest in the leasehold.

(4) Failure to mark the boundaries in the leasehold and to keep them marked as required in the regulations of the Board.

(5) Failure to utilize the leasehold on a continuing basis for the commercial production of oysters or clams.

(6) Transfer of all or part of the beneficial ownership of a leasehold to a nonresident.

(7) Substantial breach of compliance with the provisions of this article or of regulations of the Board governing use of the leasehold.

The Board is authorized to make regulations defining commercial production of oysters and clams, based upon the productive potential of particular areas, climatic or biological conditions at particular areas or particular times, availability of seed oysters and clams, availability for purchase by lessees of shells or other material to which oyster spat may attach, and the like. Commercial production may be defined in terms of planting effort made as well as in terms of quantities of oysters and clams harvested.

(o) After receipt of notice of any occurrence listed in subsection (n), the Commissioner must mail the leaseholder a letter by registered or certified mail, return receipt requested, informing him of his intention to terminate and of the reason for the action. In the event the leaseholder takes steps within thirty days to remedy the situation upon which the notice of intention to terminate was based and the Commissioner is satisfied that continuation of the lease is in the best interests of the oyster and clam culture of the State, the Commissioner may discontinue termination procedures. Where there is no discontinuance of termination procedures, the leaseholder may appeal to the Director, and, if dissatisfied, to the Board. Where there is no appeal, or where an appeal does not prevail, the Director must send a final letter of termination to the leaseholder by registered or certified mail, return receipt requested. The final letter of termination may not be mailed sooner than thirty days after receipt by the leaseholder of the Commissioner's notice of intention to terminate, as evidenced by the return receipt. The lease is terminated effective at midnight on the day the final notice of termination is received by the leaseholder, as evidenced by the return receipt. The final notice of termination may not be issued pending hearing of any appeal by the Director or by the Board.

(p) Upon final termination of any leasehold, the bottom in question is thrown open to the public for use in accordance with laws and regulations governing use of public grounds generally. Agents of the Commissioner are required as soon as possible after termination of lease to remove all markers denominating the area of the leasehold as a private bottom.

(q) Every year between January 1 and February 15 the Commissioner must mail to all leaseholders a notice of the annual rental due and include forms designed by him for determining the amount of shellfish or shells planted on the leasehold during the preceding calendar year, the amount of harvest gathered, and the names and addresses of those to whom the harvest was sold or delivered. Such forms may contain other pertinent questions relating to the utilization of the leasehold in the best interests of the oyster and clam culture of the State, and must be executed and returned by the leaseholder with the payment of his rental. Any leaseholder or his agent executing such forms for him who knowingly makes a false statement on such forms is guilty of a misdemeanor punishable in the discretion of the court.

(r) All leases and renewal leases granted before or after the effective date of this article are granted or made subject to reasonable amendment of governing statutes, regulations of the Board, and requirements imposed by the Commissioner or his agents in regulating the use of the leasehold or in processing applications or rentals. This includes such statutory increase in rentals as may be necessitated by changing conditions and refusal to renew lease after expiration, in the discretion of the Board. No increase in rentals, however, may be given retroactive effect. Any holder of any lease in effect upon the effective date of this article who deems himself damaged as to any vested property rights by the adoption of provisions of this article more restrictive than those in the law formerly governing his leasehold may apply to the Industrial Commission for the award of such damages as he may prove. The procedure governing such application shall follow as closely as feasible that set out in article 3 of chapter 143 of the General Statutes of North Carolina pertaining to tort claims against State departments and agencies, except that the limitation period upon any claims under this section is three rather than two years and the measure of damages is for any condemnation of leasehold effected by this section rather than for any tort. It is hereby directed that the amounts necessary to cover awards made by the Industrial Commission under the authority of this subsection be paid from funds available to the Department. (1893, c. 287, s. 1; Rev., s. 2371; 1909, c. 871, ss. 1-9; 1919, c. 333, s. 6; C. S., ss. 1902-1911; Ex. Sess. 1921, c. 46, s. 1; 1933, c. 346; 1953, cc. 842, 1139; 1963, c. 1260, ss. 1-3; 1965, c. 957, s. 2.)

Editor's Note.—As to the effective date of this article, see Editor's Note to § 113-127.

The word "be" in brackets in the second paragraph of subsection (e) is suggested as a correction of "the," which appears in the 1965 Session Laws.

§ **113-203. Transplanting of oysters and clams.**—(a) It is unlawful to transplant oysters taken from public grounds to private beds except:

(1) When lawfully taken during open season and transported directly to a private bed in accordance with regulations of the Board;

(2) When the transplanting is done by a dealer in accordance with the provisions of § 113-158 and implementing regulations; or

(3) When the transplanting is done in accordance with the provisions of this section and implementing regulations.

(b) It is lawful to transplant to private beds oysters or clams taken from polluted waters with a permit from the Commissioner setting out the waters from which the oysters or clams may be taken, the quantities which may be taken, the times during which the taking is permissible, and other reasonable restrictions imposed by the Commissioner to aid him in his duty of regulating such transplanting operations. Any transplanting operation which does not substantially comply with the restrictions of the permit issued is unlawful.

(c) It is lawful to transplant to private beds oysters taken from public beds managed by the State for the production of seed oysters in accordance with the implementing regulations of the Board. Persons taking such seed oysters may, in the discretion of the Board, be required to pay to the Department for oysters taken an amount to reimburse the Department in full or in part for the costs of seed-oyster management operations.

(d) The Board may implement the provisions of this section by regulations governing sale, possession, transportation, storage, handling, planting, and harvesting of oysters and clams and setting out any system of marking oysters and clams or of permits or receipts relating to them generally, from both public and private beds, as necessary to regulate the lawful transplanting of seed oysters and oysters or clams taken from or placed on public or private beds. (1921, c. 132, s. 2; C. S., s. 1959(b); 1961, c. 1189, s. 1; 1965, c. 957, s. 2.)

§ **113-204. Propagation of shellfish.**—The Board is authorized to close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish. The Board is authorized to expend State funds planting such areas and to manage them in ways beneficial to the overall productivity of the shellfish industry in North Carolina. The Board in its discretion in accordance with desirable conservation objectives may make shellfish produced by it available to commercial fishermen generally, to those in possession of private shellfish beds, or to selected individuals cooperating with the Board in demonstration projects concerned with the cultivation, harvesting, or processing of shellfish. (1921, c. 132, s. 1; C. S., s. 1959(a); 1961, c. 1189, s. 1; 1965, c. 957, s. 2.)

§ **113-205. Registration of grants in navigable waters; exercise of private fishery rights.**—(a) Every person claiming title to any part of the bed lying under navigable waters of North Carolina or any right of fishery in navigable waters superior to that of the general public must register the grant, charter, or other authorization under which he claims with the Commissioner. Such registration must be accompanied by a survey of the claimed area, meeting criteria established by the Commissioner for surveys of oyster and clam leases. All rights and titles not registered in accordance with this section on or before January 1, 1970, are hereby declared null and void. The Commissioner must give notice of this section at least once each calendar year for three years by publication in a newspaper or newspapers of general circulation throughout all coastal counties of the State.

(b) The Board may make reasonable regulations governing utilization of private fisheries and may require grantees or others with private rights to mark their fishery areas or private beds in navigable waters as a precondition to the right of excluding the public from exercising the private rights claimed to be secured to them. Nothing in this section is to be deemed to confer upon any grantee or other person with private rights the power to impede navigation upon or hinder any other appropriate use of the surface of navigable waters of North Carolina. (1965, c. 957, s. 2.)

§ 113-206. Chart of grants, leases and fishery rights; overlapping leases and rights; contest or condemnation of claims; damages for taking of property.—(a) The Commissioner must commence to prepare as expeditiously as possible charts of the waters of North Carolina containing the locations of all oyster and clam leaseholds made by the Department under the provisions of this article and of all existing leaseholds as they are renewed under the provisions of this article, the locations of all claims of grant of title to portions of the bed under navigable waters registered with him, and the locations of all areas in navigable waters to which a right of private fishery is claimed and registered with him. Charting or registering any claim by the Commissioner in no way implies recognition by the State of the validity of the claim.

(b) In the event of any overlapping of areas leased by the Department, the Commissioner shall recommend modification of the areas leased as he deems equitable to all parties. Appeal from the recommendation of the Commissioner lies for either party in the same manner as for a lease applicant as to which there is a recommendation of denial or modification of lease. If there is no appeal, or upon settlement of the issue upon appeal, the modified leases must be approved by the Board and reissued by the Director in the same manner as initial or renewal leases. Leaseholders must furnish the Commissioner surveys of the modified leasehold areas, meeting the requisite criteria for surveys established by the Commissioner.

(c) In the event of any overlapping of areas leased by the Department and of areas in which title or conflicting private right of fishery is claimed and registered under the provisions of this article, the Commissioner must give preference to the leaseholder engaged in the production of oysters or clams in commercial quantities who received the lease with no notice of the existence of any claimed grant or right of fishery. To this end, the Commissioner shall cause a modification of the claim registered with him and its accompanying survey to exclude the leasehold area. Such modification effected by the Commissioner has the effect of voiding the grant of title or right of fishing to the extent indicated.

(d) In the interest of conservation of the marine and estuarine resources of North Carolina, the Board may institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of North Carolina registered with the Commissioner. In such proceeding, the burden of showing title or right of fishery, by the preponderance of the evidence, shall be upon the claiming title or right holder. In the event the claiming title or right holder prevails, the court shall fix the monetary worth of the claim. The Board may elect to condemn the claim upon payment of the established owners or right holders their pro rata shares of the amount so fixed. The Board may make such payments from such funds as may be available to it. An appeal lies to the Supreme Court by either party both as to the validity of the claim and as to the fairness of the amount fixed. The Board in such actions may be represented by the Attorney

General. In determining the availability of funds to the Board to underwrite the costs of litigation or make condemnation payments, the use which the Board proposes to make of the area in question may be considered; such payments are to be deemed necessary expenses in the course of operations attending such use or of developing or attempting to develop the area in the proposed manner.

(e) To the extent that any application of the provisions of § 113-205 and this section is deemed to constitute a taking of private property, any claimant may apply to the Industrial Commission for the award of such damages as he may prove. The procedure governing such application shall follow as closely as feasible that set out in article 3 of chapter 143 of the General Statutes of North Carolina pertaining to tort claims against State departments and agencies, except that the limitation period upon any claims brought under the authority of this subsection is three rather than two years and the measure of damages is for any condemnation effected rather than for any tort. Where the claiming party asserts damage from the voiding of a grant or right under § 113-205 (a) and further asserts his minority or other disability subsequent to January 1, 1970, the claimant is granted a period of three years after attaining majority or after removal of the disability in which to prosecute the claim before the Industrial Commission. No claims whatever may be entertained by the Industrial Commission, however, after January 1, 1990. It is hereby directed that the amounts necessary to cover awards made by the Industrial Commission under the authority of this subsection be paid from funds available to the Department. (1965, c. 957, s. 2.)

§§ **113-207 to 113-220:** Reserved for future codification purposes.

ARTICLE 17.

Administrative Provisions; Regulatory Authority of Board and Department.

§ **113-221. Filing, codification and publication of regulations; effective date of regulations; proclamations suspending or implementing regulations; presumption of publication; judicial notice of codifications; Director's certificates as evidence.** — (a) All regulations of the Board promulgated under the authority of this subchapter must be filed with the Secretary of State in accordance with §§ 143-195 to 143-197. In addition, all such regulations of the Board the violation of which constitutes a crime must be filed with the clerk of superior court of each county containing coastal fishing waters within its borders.

(b) The Commissioner must periodically codify the regulations of the Board implementing this subchapter which are subject to annual or seasonal change; other regulations or sets of regulations need be recodified only as supplies are exhausted or substantial changes are made. The Commissioner must cause to be distributed to each licensee upon purchasing his license each year the appropriate set or sets of such codified regulations, plus any supplement needed to make them current, pertaining to the activities to be engaged in by the licensee.

(c) As soon as feasible after any meeting of the Board amending or adding regulations, the Commissioner must cause to be issued to all licensees who may be affected a newsletter containing the text of such amendments or added regulations. The newsletter need not be issued if a codification containing the amended or added regulations is scheduled for distribution within a reasonable period following the meeting of the Board.

(d) Unless an effective date is stated by the Board, its regulations take effect immediately upon passage. Any regulation change resulting in further restrictions upon licensees or the public, however, should in the ordinary case be given a future effective date sufficiently advanced to allow for compliance with the publication procedures of this section. Where circumstances require that such restrictive regulation be put into effect immediately, the Board should take steps to insure that actual public notice is given—in a fashion similar to that set out in subsection (e). Unless there are overriding policy considerations involved, any regulation of the Board which will in the judgment of the Board result in severe curtailment of the usefulness or value of equipment in which fishermen have any substantial investment should be given such a future effective date as to minimize undue potential economic loss to fishermen. Whether or not any provision may cause potential economic loss and whether or not a future effective date should be set is a matter within the complete discretion of the Board. The Board need not set any future effective date more than two years in advance of the passage of any regulation.

(e) The Board may delegate to the Director the authority by proclamation to suspend or implement, in whole or in part, particular regulations of the Board which may be affected by variable conditions. Such proclamations are to be issued by the Director upon the recommendation of the Commissioner. All proclamations must state the hour and date upon which they become effective and must be issued at least forty-eight hours in advance of the effective date and time. The Director must keep a permanent file of the texts of proclamations issued by him, and furnish upon request certified copies of any proclamation for use in evidence in any civil or criminal proceeding in which the text of a proclamation may be in issue. Proclamations need not be filed with the Secretary of State or with any clerk of court.

The Department must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby. Such effort includes press releases to communications media, posting of notices at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Department, and such other measures designed to reach the persons who may be affected.

(f) All persons who may be affected by them are under a duty to keep themselves informed of current regulations of the Board and proclamations of the Director. It is no defense in any criminal prosecution for the defendant to show that he in fact received no notice of a particular regulation or proclamation. In any prosecution for violation of the provisions of any regulation or proclamation, or in which proof of matter contained in a regulation or proclamation is involved, the Department is deemed to have complied with publication procedures and the burden is on the defendant to show by the greater weight of the evidence substantial failure of compliance by the Department with the publication procedures of this section.

(g) Every court must take judicial notice of any codification of regulations issued by the Commissioner within two years preceding the date of the offense charged or transaction in issue. In the absence of any indication to the contrary, such codifications are to be deemed accurate and current statements of the text of the regulations in question and it is incumbent upon any person asserting that a relevant portion of the codified text is inaccurate, or has been amended or deleted, to satisfy the court as to the text of the regulations which is in fact properly applicable.

(h) Certificates of the Director as to the text of a regulation or proclamation or as to any other official matter concerning the Department must be received in court as prima facie evidence of the truth of the statement in the certificate. Certificates bearing the signature of the Director upon paper containing the letterhead of the Department are, in the absence of evidence to the contrary, to be accepted as genuine without any need for formal proof of the signature of the Director. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., s. 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1134, 1251; 1963, c. 1097, s. 1; 1965, c. 957, s. 2.)

§ **113-222. Arrest, service of process and witness fees of inspectors.**—All arrest fees and other fees that may be charged in any bill of costs for service of process by inspectors must be paid to the county in which the trial is held. No witness fee may be taxed in any bill of costs by virtue of the appearance of an inspector as a witness in a criminal case within his enforcement jurisdiction. Acceptance by any inspector of any arrest fee, witness fee, or any other fee to which he is not entitled is a misdemeanor punishable in the discretion of the court. (1965, c. 957, s. 2.)

§ **113-223. Reciprocal agreements by Board generally.** — Subject to the specific provisions of §§ 113-153 and 113-161 relating to reciprocal provisions as to landing and selling catch and as to licenses, the Board is empowered to make reciprocal agreements with other jurisdictions respecting any of the matters governed in this subchapter. Pursuant to such agreements the Board may modify provisions of this subchapter in order to effectuate the purposes of such agreements, in the overall best interests of the conservation of marine and estuarine resources. (1915, c. 84, s. 5; 1917, c. 290, s. 10; C. S., s. 1883; 1953, c. 1086; 1965, c. 957, s. 2.)

§ **113-224. Cooperative agreements by Board.** — The Board is empowered to enter into cooperative agreements with public and private agencies and individuals respecting the matters governed in this subchapter. Pursuant to such agreements the Board may expend funds, assign employees to additional duties within or without the State, assume additional responsibilities, and take other actions that may be required by virtue of such agreements, in the overall best interests of the conservation of marine and estuarine resources. (1965, c. 957, s. 2.)

§ **113-225. Inspectors not to have financial interest in fisheries.** — Except as provided in this subchapter respecting operations of demonstration and research projects by employees of the Department as part of their employment, no inspector may be financially interested in any fishing industry in the State of North Carolina. (1965, c. 957, s. 2.)

§ **113-226. Administrative authority of Board; administration of funds; delegation of powers.**—(a) In the overall best interests of the conservation of marine and estuarine resources, the Board may lease or purchase lands, equipment, and other property; accept gifts and grants on behalf of the State; establish boating and fishing access areas; establish fisheries, fishery processing or storage plants, planted seafood beds, fish farms, and other enterprises related to the conservation of marine and estuarine resources as research or demonstration projects either alone or in cooperation with some individual or agency; sell the catch or processed fish or other marine and estuarine resources resulting from research fishing operations or demonstration projects; provide matching funds for entering into projects with some other governmental agency or with some scientific, educational, or charitable foundation or institution; condemn lands in accordance with the provisions of chapter 40 of the General Statutes and other governing provisions of law; and sell, lease, or give away property acquired by it. Provided, that any private person selected to receive gifts or benefits by the Department be selected:

(1) With regard to the overall public interest that may result, and
(2) From a defined class upon such a rational basis open to all within the class as to prevent constitutional infirmity with respect to requirements of equal protection of the laws or prohibitions against granting exclusive privileges or emoluments.

(b) All money credited to, held by, or to be received by the Department in respect of the conservation of marine and estuarine resources must be deposited with the Department for the use of the Division. In administering such funds and recommending expenditures, the Department must give attention to the sources of the revenues received so as to encourage disbursements to be made on an equitable basis; nevertheless, except as provided in this section, separate funds may not be established and particular projects and programs deemed to be of sufficient importance in the conservation of marine and estuarine resources may receive proportional shares of Division expenditures that are greater than the proportional shares of license and other revenues produced by such projects or programs for the Department.

(c) If as a precondition of receiving funds under any cooperative program there must be a separation of license revenues received from certain classes of licensees and utilization of such revenues for limited purposes, the Department is directed to make such arrangements for separate accounting or for separate funding as may be necessary to insure the use of the revenues for the required purposes and eligibility for the cooperative funds. In such instance, if required, such revenues may be retained by the Department until expended upon the limited purposes in question. This subsection applies whether the cooperative program is with a public or private agency and whether the Department acts alone on behalf of the State or in conjunction with the Commission or some other State agency.

(d) The Board may, within the terms of policies set by regulation and applicable statutes in this subchapter, delegate to the Director or the Commissioner, in its discretion, all administrative powers granted to it. (1965, c. 957, s. 2.)

§ **113-227. Appointment of Commissioner.**—The Commissioner is to be appointed by the Director in accordance with § 113-12. (1965, c. 957, s. 2.)

§ **113-228. Adoption of federal regulations.** — To the extent that the Department is granted authority in this subchapter over subject matter as to which there is concurrent federal jurisdiction, the Board in its discretion may by reference in its regulations adopt relevant provisions of federal laws and regulations as State regulations. To prevent confusion or conflict of jurisdiction in enforcment, the Board may provide for automatic incorporation by reference into its regulations of future changes within any particular set of federal laws or regulations relating to some subject clearly within the jurisdiction of the Department. (1965, c. 957, s. 2.)

§§ **113-229 to 113-240**: Reserved for future codification purposes.

Article 18.

Commercial and Sports Fisheries Advisory Board.

§ **113-241. Creation; function, purpose and duties.** — There is hereby created the Commercial and Sports Fisheries Advisory Board. The function, purpose, and duty of the Advisory Board is to study all matters and activities in connection with the conservation of marine and estuarine resources and make recommendations to the Commissioner respecting ways to improve the conservation of such resources.

The Advisory Board has the duty of acting as a liaison group between sports and commercial fishermen, and others interested in the beneficial utilization of the marine and estuarine resources, and the Commissioner. The Advisory Board is to consider all matters which may be referred to it for study by the Board, the Commercial and Sports Fisheries Committee, the Commissioner, or the General Assembly and it must render a report in writing giving conclusions on each matter so referred. It may originate its own studies on various matters within the scope of its interests and report on such matters to the public or to the agency or official appropriately concerned. The Advisory Board, through its chairman and other members, should keep in close communication with the Commissioner and with members of the Commercial and Sports Fisheries Committee and bring to their attention all such matters as may be brought to the attention of the Advisory Board which do not require specific study but which may require decisions by them and by the Board. Aside from making recommendations to the Commissioner and other officials and agencies as to matters referred to it, the Advisory Board should make recommendations on all matters which are deemed relevant which may come to the attention of the various members of the Advisory Board through their associations with members of the public and various groups interested in the conservation of marine and estuarine resources. (1965, c. 957, s. 2.)

§ **113-242. Appointment of members; interests represented.** — The Governor is authorized to appoint the Advisory Board to be composed of eleven members as follows:

(1) Three sports fishermen;
(2) Three commercial fishermen;
(3) Two professional scientists with backgrounds relevant to the conservation of marine and estuarine resources; and
(4) Three persons who are, at the time of their appointments, members of the General Assembly. (1965, c. 957, s. 2.)

§ **113-243. Appointment of chairman; terms of members.**—The Governor must delegate one of the members of the Advisory Board as chairman. The member so designated serves as chairman at the pleasure of the Governor. Members of the Advisory Board serve at the pleasure of the Governor. (1965, c. 957, s. 2.)

§ **113-244. Organization and meetings.** — At its first meeting after the appointment of a new chairman, or after the appointment of more than three new members since the last organizational election, the Advisory Board must organize and elect a vice-chairman and a secretary. In any event an organizational election must be held once every four years. A quorum for such organizational election meetings consists of seven members; the quorum for other meetings consists of six members.

Regular meetings of the Advisory Board may be held upon such a schedule as the Advisory Board may adopt. It may meet with the Commercial and Sports Fisheries Committee at the regular quarterly meetings of the Board, provided that the Advisory Board must hold at least one regular meeting per year prior to the meeting of the Board at some coastal area of the State as provided in § 113-6. Either the chairman of the Advisory Board or the Commissioner, in his discretion after consultation with interested persons, may call special meetings of the Advisory Board. The Commissioner and the chairman of the Commercial and Sports Fisheries Committee must be notified of and are entitled to attend all regular and special meetings of the Advisory Board. (1965, c. 957, s. 2.)

§ **113-245. Compensation and expenses.** — The members of the Advisory Board are to be compensated while in attendance of meetings or engaged in the business of the Advisory Board by payment of per diem, subsistence, and travel allowances fixed for members of State boards, commissions, and committees in §§ 138-5 and 138-7. (1965, c. 957, s. 2.)

§§ **113-246 to 113-250:** Reserved for future codification purposes.

ARTICLE 19.

Marine Fisheries Compact and Commission.

§ **113-251. Definition of terms.**—(a) As used in this article, the word "Commission" refers to the Atlantic States Marine Fisheries Commission and the word "commissioner" refers to a member of that Commission.

(b) The reference in Article III of the compact set out in § 113-252 to the chairman of the committee on commercial fisheries shall be deemed to refer to the chairman of the successor Commercial and Sports Fisheries Committee.

(c) The reference in Article III of the compact set out in § 113-252 to the Commissioner of Commercial Fisheries shall be deemed to refer to the Commissioner of Commercial and Sports Fisheries. (1965, c. 957, s. 2.)

§ 113-252. Atlantic States Marine Fisheries Compact and Commission. — The Governor of this State is hereby authorized and directed to execute a compact on behalf of the State of North Carolina with any one or more of the States of Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, Georgia, and Florida and with such other states as may enter into the compact, legally joining therein in the form substantially as follows:

ATLANTIC STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

Article I

The purpose of this compact is to promote the better utilization of the fisheries, marine, shell and anadromous, of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause. It is not the purpose of this compact to authorize the states joining herein to limit the production of fish or fish products for the purpose of establishing or fixing the price thereof, or creating and perpetuating monopoly.

Article II

This agreement shall become operative immediately as to those states executing it whenever any two or more of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, North Carolina, Georgia and Florida have executed it in the form that is in accordance with the laws of the executing state and the Congress has given its consent. Any state contiguous with any of the aforementioned states and riparian upon waters frequented by anadromous fish, flowing into waters under the jurisdiction of any of the aforementioned states, may become a party hereto as hereinafter provided.

Article III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the Atlantic States Marine Fisheries Commission. The Board of the North Carolina Department of Conservation and Development shall designate either the director of the Department, the chairman of the committee on commercial fisheries, or the Commissioner of Commercial Fisheries as one member of the Commission, and the Commission on Interstate Cooperation of the State shall designate a member of the North Carolina legislature as one of the members of said Commission, and the third member of said Commission, who shall be a citizen of the State having a knowledge of and interest in marine fisheries, shall be appointed by the Governor. This Commission shall be a body corporate, with the powers and duties set forth herein.

Article IV

The duty of the said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Atlantic seaboard. The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the aforementioned states.

To that end the Commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the governors and legislatures of the various signatory states legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Atlantic seaboard. The Commission shall more than one month prior to any regular meeting of the legislature in any signatory state, present to the governor of the state its recommendations relating to enactments to be made by the legislature of that state in furthering the intents and purposes of this compact.

The Commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable.

The Commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs, or joint stocking by some or all of the states party hereto, and when two or more of the states shall jointly stock waters the Commission shall act as the coordinating agency for such stocking.

Article V

The Commission shall elect from its number a chairman and a vice-chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect, and shall fix and determine their duties, qualifications and compensation. Said Commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

Article VI

No action shall be taken by the Commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states present at any meeting. No recommendation shall be made by the Commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The Commission shall define what shall be an interest.

Article VII

The Fish and Wildlife Service of the Department of the interior of the government of the United States shall act as the primary research agency of the Atlantic States Marine Fisheries Commission, cooperating with the research agencies in each state for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the Commission.

An advisory committee to be representative of the commercial fishermen and the salt water anglers and such other interests of each state as the Commission deems advisable shall be established by the Commission as soon as practicable for the purpose of advising the Commission upon such recommendations as it may desire to make.

Article VIII

When any state other than those named specifically in Article II of this Compact shall become a party thereto for the purpose of conserving its anadromous fish in accordance with the provisions of Article II the participation of such state in the action of the Commission shall be limited to such species of anadromous fish.

Article IX

Nothing in this compact shall be construed to limit the powers of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state imposing additional conditions and restrictions to conserve its fisheries.

Article X

Continued absence of representation or of any representative on the Commission from any state party hereto shall be brought to the attention of the governor thereof.

Article XI

The states party hereto agree to make annual appropriations to the support of the Commission in proportion to the primary market value of the products of their fisheries, exclusive of cod and haddock, as recorded in the most recently published reports of the Fish and Wildlife Service of the United States Department of the Interior, provided no state shall contribute less than two hundred dollars ($200.00) per annum and the annual contribution of each state above the minimum shall be figured to the nearest one hundred dollars ($100.00).

The compacting states agree to appropriate initially the annual amounts scheduled below, which amounts are calculated in the manner set forth herein, on the basis of the catch record of 1938. Subsequent budgets shall be recommended by a majority of the Commission and the cost thereof allocated equitably among the states in accordance with their respective interests and submitted to the compacting states.

Schedule of Initial Annual State Contributions

Maine	$ 700
New Hampshire	200
Massachusetts	2300
Rhode Island	300
Connecticut	400
New York	1300
New Jersey	800
Delaware	200
Maryland	700
Virginia	1300
North Carolina	600
South Carolina	200
Georgia	200
Florida	1500

Article XII

This compact shall continue in force and remain binding upon each compacting state until renounced by it. Renunciation of this compact must be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other states party hereto. (1949, c. 1086, s. 1; 1965, c. 957, s. 18.)

Cross Reference.—See Editor's Note to § 113-127.

Editor's Note. — Prior to the 1965 amendment, this section was codified as §§ 113-377.1.

§ **113-253. Amendment to compact to establish joint regulation of specific fisheries.**—The Governor is authorized to execute on behalf of the State of North Carolina an amendment to the compact set out in § 113-252 with any one or more of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, and Florida or such other states as may become party to that compact for the purpose of permitting the states that ratify this amendment to establish joint regulation of specific fisheries common to those states through the Atlantic States Marine Fisheries Commission and their representatives on that body. Notice of intention to withdraw from this amendment shall be executed and transmitted by the Governor and shall be in accordance with

Article XII of the Atlantic States Marine Fisheries Compact and shall be effective as to this State with those states which similarly ratify this amendment. This amendment shall take effect as to this State with respect to such other of the aforesaid states as take similar action.

Amendment No. 1 of the Atlantic States Marine Fisheries Compact

The states consenting to this amendment agree that any two or more of them may designate the Atlantic States Marine Fisheries Commission as a joint regulatory agency with such powers as they may jointly confer from time to time for the regulation of the fishing operations of the citizens and vessels of such designating states with respect to specific fisheries in which such states have a common interest. The representatives of such states on the Atlantic States Marine Fisheries Commission shall constitute a separate section of such Commission for the exercise of the additional powers so granted, provided that the states so acting shall appropriate additional funds for this purpose. The creation of such section as a joint regulatory agency shall not deprive the states participating therein of any of their privileges or powers or responsibilities in the Atlantic States Marine Fisheries Commission under the general compact. (1949, c. 1086, s. 2; 1965, c. 957, s. 18.)

Editor's Note.—Prior to the 1965 amendment this section was codified as § 113-377.2. The amendment also substituted "§ 113-252" for "§ 113-377.1" near the beginning of the section.

§ **113-254. North Carolina members of Commission.**—In pursuance of Article III of said compact there shall be three members (hereinafter called commissioners) of the Atlantic States Marine Fisheries Commission (hereinafter called commission) from the State of North Carolina. The first commissioner from the State of North Carolina shall be either the Director of the Department of Conservation and Development, the chairman of the Commercial and Sports Fisheries Committee, or the Commissioner of Commercial and Sports Fisheries of the State of North Carolina ex officio, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said office and his successor as commissioner shall be his successor as either the Director of the Department of Conservation and Development, the chairman of the Commercial and Sports Fisheries Committee, or the Commissioner of Commercial and Sports Fisheries, as the case may be. The second commissioner from the State of North Carolina shall be a legislator and member of the Commission on Interstate Cooperation of the State of North Carolina, ex officio, designated by said Commission on Interstate Cooperation, and the term of any such ex officio commissioner shall terminate at the time he ceases to hold said legislative office or said office as Commissioner on Interstate Cooperation, and his successor as commissioner shall be named in like manner. The Governor (by and with the advice and consent of the Senate) shall appoint a citizen as a third commissioner who shall have a knowledge of and interest in the marine fisheries problem. The term of said Commissioner shall be three years and he shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of such Commissioner from any reason or cause shall be filled by appointment by the Governor (by and with the advice and consent of the Senate) for the unexpired term. The Director of the Department of Conservation and Development, the chairman of the Commercial and Sports Fisheries Committee, or the Commissioner of Commercial and Sports Fisheries appointed pursuant to Article III as ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in his department or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the Commission. The terms of each of the initial three members shall begin at the date of the appointment of the appointive commissioner, provided the said compact shall then have gone into effect in accordance with Article II of the compact; otherwise they shall begin upon the date upon which said compact shall become effective in accordance with said Article II.

Any commissioner may be removed from office by the Governor upon charges and after a hearing. (1949, c. 1086, s. 3; 1965, c. 957, s. 18.)

Editor's Note.—Prior to the 1965 amendment this section was codified as § 113-377.3. The amendment also substituted "Commercial and Sports Fisheries Committee" for "committee on commercial fisheries" and "Commissioner of Commercial and Sports Fisheries" for "Commissioner of Commercial Fisheries" throughout the section.

§ 113-255. Powers of Commission and commissioners. — There is hereby granted to the Commission and the commissioners thereof all the powers provided for in the said compact and all the powers necessary or incidental to the carrying out of said compact in every particular. All officers of the State of North Carolina are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of said compact in every particular; it being hereby declared to be the policy of the State of North Carolina to perform and carry out the said compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the State government or administration of the State of North Carolina are hereby authorized and directed at convenient times and upon request of the said Commission to furnish the said Commission with information and data possessed by them or any of them and to aid said Commission by loan of personnel or other means lying within their legal rights respectively. (1949, c. 1086, s. 4; 1965, c. 957, s. 18.)

Editor's Note.—Prior to the 1965 amendment this section was codified as § 113-377.4.

§ 113-256. Powers herein granted to Commission are supplemental.—Any powers herein granted to the Commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said Commission by other laws of the State of North Carolina or by the laws of the states of Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, Georgia and Florida or by the Congress or the terms of said compact. (1949, c. 1086, s. 5; 1965, c. 957, s. 18.)

Editor's Note.—Prior to the 1965 amendment this section was codified as § 113-377.5.

§ 113-257. Report of Commission to Governor and legislature; recommendations for legislative action; examination of accounts and books by Auditor.—The Commission shall keep accurate accounts of all receipts and disbursements and shall report to the Governor and the legislature of the State of North Carolina on or before the tenth day of December in each year, setting forth in detail the transactions conducted by it during the twelve months preceding December 1st of that year and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the State of North Carolina which may be necessary to carry out the intent and purposes of the compact between the signatory states.

The Auditor of the State of North Carolina is hereby authorized and empowered from time to time to examine the accounts and books of the Commission, including its receipts, disbursements and such other items referring to its financial standing as such Auditor may deem proper and to report the results of such examination to the Governor of such State. (1949, c. 1086, s. 6; 1955, c. 236, s. 2; 1965, c. 957, s. 18.)

Editor's Note.—Prior to the 1965 amendment this section was codified as § 113-377.6.

§ **113-258. Commission subject to provisions of Executive Budget Act.**—The Atlantic States Marine Fisheries Commission of the State of North Carolina shall be subject to all the terms and provisions of the Executive Budget Act, article 1 of chapter 143 of the General Statutes of North Carolina. (1949, c. 1086, s. 7; 1955, c. 236, s. 1; 1965, c. 957, s. 18.)

Editor's Note.—Prior to the 1965 amendment this section was codified as § 113-377.7.

§§ **113-259, 113-260:** Reserved for future codification purposes.

ARTICLE 20.

Miscellaneous Regulatory Provisions Applicable Both to Department and Commission.

§ **113-261. Taking fish for scientific purposes; cultural and scientific operations.**—(a) The Department, the Commission, and any agency of the United States with jurisdiction over fish is hereby granted the right to take fish within the State, to conduct fish cultural operations and scientific investigations in the several waters of North Carolina, and to erect fish hatcheries and fish propagating plants without regard to any licensing or permit requirements in this subchapter.

(b) The Department with respect to fish in coastal fishing waters and the Commission with respect to fish in inland fishing waters may provide for the issuance of permits, on such terms as they deem just and in the best interests of conservation, authorizing persons to take such fish through the use of drugs, poisons, explosives, electricity, or any other normally prohibited manner. Such permits need not be restricted solely to victims of depredations or to scientific or educational institutions, but should be issued only for good cause. (1915, c. 84, s. 7; C. S., s. 1886; 1965, c. 957, s. 2.)

§ **113-262. Taking by poisons, drugs, explosives or electricity prohibited; exceptions; possession of illegally killed fish as evidence.**—(a) Except as otherwise provided in this article, or in regulations permitting use of electricity to take certain fish, it is a misdemeanor punishable in the discretion of the court to take any fish through the use of poisons, drugs, explosives, or electricity.

(b) The possession of any fish which bears evidence of having been killed in violation of this section constitutes prima facie evidence that the person in possession intentionally took such fish. (1883, c. 290; Code, s. 1094; Rev., s. 3417; C. S., s. 1968; 1927, c. 107; 1953, c. 1134; 1955, c. 1053, ss. 1, 3, 4; 1957, c. 1056; 1965, c. 957, s. 2.)

§ **113-263. Inspecting plans and specifications of dams.**—The Department and the Commission, in addition to other agencies primarily responsible, may inspect the plans and specifications of all dams proposed to be built, in North Carolina or elsewhere within the United States, the design or proposed mode of construction of which may have an adverse effect upon fish within the State. The Department or the Commission, as the case may be, may be heard before the appropriate agency charged with approving said plans and specifications, and due consideration shall be given to said Department or Commission in the approval or disapproval of the plans and specifications of proposed dams by the agencies so charged with said duty. (1965, c. 957, s. 2.)

§ **113-264. Regulatory power over property of agency.** — The Board and the Commission are granted the power by regulation to license, regulate, prohibit, or restrict the public as to use and enjoyment of, or harm to, any property of the Department and the Commission, and may charge the public reasonable fees for access to or use of such property. "Property" as the word is used in this section is intended to be broadly interpreted and includes lands, buildings, vessels, vehicles, equipment, markers, stakes, buoys, posted signs and other notices, trees and shrubs and artificial constructions in boating and fishing access areas, and all other property owned, leased, or managed by either the Department or the Commission. Wilful destruction of any property of the Department or the Commission is a misdemeanor punishable in the discretion of the court. (1965, c. 957, s. 2.)

§ **113-265. Fishing from bridges; obstructing or polluting flow of water into hatchery; throwing fish offal into waters; robbing or injuring nets, seines, buoys, etc.**—(a) The Board and the Commission may by regulation prohibit or restrict fishing from any bridge so constructed that persons fishing on the bridge are endangered by passing vehicular or rail traffic. The jurisdiction of the Board extends to bridges over coastal fishing waters; the jurisdiction of the Commission extends to bridges over inland fishing waters. In any event, no one may fish from the draw span of any bridge.

(b) No person may obstruct, pollute, or diminish the natural flow of water into or through any fish hatchery in violation of the requirements of the Department of Water Resources and the State Stream Sanitation Committee.

(c) It is unlawful for any person to throw or cause to be thrown into the channel of any navigable waters fish offal in any quantity likely to hinder or prevent the passage of fish along such channel. The Board and the Commission may by regulation impose further restrictions upon the throwing of fish offal in any coastal fishing waters or inland fishing waters respectively.

(d) It is unlawful for any person without the authority of the owner of the equipment to take any fish from nets, traps, and other devices to catch fish which have been placed in the open waters of the State. Violation of this subsection is a misdemeanor punishable in the discretion of the court.

(e) Any master or other person having the management or control of a vessel in the navigable waters of the State who wilfully, wantonly, and unnecessarily does injury to any seine or net which may lawfully be hauled, set, or fixed in such waters for the purpose of taking fish is guilty of a misdemeanor punishable in the discretion of the court.

(f) Any person who wilfully destroys or injures any buoys, markers, stakes, nets, or other devices or property lawfully set out in the open waters of the State in connection with any fishing or fishery is guilty of a misdemeanor punishable in the discretion of the court. (1883, c. 137, s. 5; Code, ss. 3385, 3386, 3389, 3407, 3418; Rev., ss. 2444, 2465, 2478; C. S., ss. 1969, 1971, 1972; 1959, c. 405; 1965, c. 957, s. 2.)

§§ **113-266 to 113-270:** Reserved for future codification purposes.

Article 21.

Inland Fishing Licenses.

§ **113-271. Hook-and-line licenses in inland fishing waters.**—(a) Except as otherwise provided in this article, no one may fish by means of hook and line in inland fishing waters without having first procured a current and valid hook-and-line fishing license.

(b) Except where indicated otherwise, all hook-and-line fishing licenses are annual licenses. Annual fishing licenses, except for the combination hunting-fishing license, are issued beginning January 1 each year and run until the following December 31.

(c) The hook-and-line fishing licenses are granted upon such terms and for such prices as set out below. The amount stated in parentheses following the price of a license indicates the fee to be kept by a license agent when selling such license, out of the amount collected.

(1) Resident State license, $4.25 ($0.25). This license is valid only for use by an individual resident of the State.

(2) Resident State combination hunting-fishing license, $6.25 ($0.25). This license is valid only for use by an individual resident of the State. It is valid during the period set for annual hunting licenses in § 113-95.

(3) Resident county license, $1.65 ($0.15). This license is valid only for use by an individual resident of the State within the county in which he lives.

(4) Resident State daily license, $0.85 ($0.10). This license is valid only for use on a single day by an individual resident of the State.

(5) Nonresident State license, $8.25 ($0.25). This license is valid for use by an individual within the State.

(6) Nonresident State five-day license, $3.75 ($0.25). This license is valid only for use on five consecutive days by an individual within the State.

(7) Nonresident State daily license, $1.65 ($0.15). This license is valid only for use on a single day by an individual within the State. (1929, c. 335, ss. 1-4; 1931, c. 351; 1933, c. 236; 1935, c. 478; 1945, c. 529, ss. 1, 2; c. 567, ss. 1-4; 1949, c. 1203, s. 2; 1953, c. 1147; 1955, c. 198, s. 1; 1957, c. 849, s. 2; 1959, c. 164; 1961, c. 312; c. 834, ss. 3-6; 1965, c. 957, s. 2.)

§ **113-272. Special trout licenses.**—(a) In addition to such hook-and-line fishing license as may be required in § 113-271, no one may fish in public mountain trout waters without having first procured a current and valid special trout license.

(b) All special trout licenses are annual licenses issued beginning January 1 each year and running until the following December 31.

(c) Public mountain trout waters are those waters designated by the Commission as having been stocked with trout at public expense.

(d) The special trout licenses issued by the Commission are as follows:

(1) Resident special trout license, $1.25 ($0.25). This license is valid only for use by an individual resident of the State in public mountain trout waters.

(2) Nonresident special trout license, $3.25 ($0.25). This license is valid for use by an individual within the State in public mountain trout waters. (1953, cc. 432, 828; 1955, c. 198, s. 2; 1961, c. 834, s. 2; 1965, c. 957, s. 2.)

§ **113-273. Licenses for propagation and sale of fish.** — (a) All Licenses Annual.—All licenses under this section are annual licenses issued beginning January 1 each year and running until the following December 31.

(b) License Required; Regulations Governing Licensee.—Except as otherwise provided, no person may engage in any activity as to which a license is required by this section without having first procured a current and valid license for such activity. In implementing the provisions of this section, the Commission may by regulation govern every aspect of the licensee's dealings in fish and require licensees to keep records and statistics, be subject to inspection and audit, make periodic reports, post performance bonds payable to the Commission conditioned upon faithful compliance with provisions of law, and otherwise comply with reasonable regulations and administrative requirements that may be imposed under the authority of this section.

(c) Commercial Trout Pond License.—As used in this subsection, a "commercial trout pond" is an artificial impoundment of three acres or less lying on private land and not on a natural stream, but which may be supplied through screened and regulated supply lines, which pond must be stocked exclusively with hatchery-reared mountain trout obtained from such hatcheries as may be approved by the Commission. The Commission may by regulation prescribe qualifications of operators of commercial trout ponds, standards of operation, and the conditions under which trout from such ponds may be taken, transported, possessed, bought, and sold. Commercial trout pond licenses issued by the Commission are as follows:

(1) Commercial trout fishing pond license, $25.00. Authorizes the responsible licensed pond owner or operator to sell trout taken by fishermen from the pond to such fishermen.

(2) Commercial trout holding pond license, $25.00. Authorizes the responsible licensed pond owner or operator to hold trout for such commercial purposes other than angling as may be authorized in the implementing regulations of the Commission.

(d) Game Fish Sale License. — The Commission may by regulation authorize and license the sale of game fish other than trout taken from private ponds for propagation purposes and for such other purposes as the Commission may specify, in the overall interests of the conservation of wildlife resources. The Commission may prescribe standards of operation and the conditions under which such fish may be taken, transported, possessed, bought, and sold. Game fish sale licenses are issued by the Commission for a fee of one dollar ($1.00).

(e) Fish Propagation License.—The Commission may by regulation authorize and license the operation of fish hatcheries for species of fish which may be found in inland fishing waters. The Commission may prescribe standards of operation, qualifications of operators, and the conditions under which such fish may be taken, transported, possessed, bought, and sold. Fish propagation licenses issued by the Commission are as follows:

(1) Trout and bass propagation license, $5.00. Authorizes artificial propagation and sale of all species of fish permitted under the regulations of the Commission.

(2) Restricted propagation license, $0.50. Authorizes artificial propagation and sale of such species of fish, other than trout and bass, as may be designated in the license, in accordance with governing regulations of the Commission. (1929, c. 198, ss. 1, 2, 4; 1933, c. 430, s. 1; 1965, c. 957, s. 2.)

§ 113-274. Permits.—(a) As used in this article, the word "permit" refers to a written authorization issued without charge by an employee or agent of the Commission to an individual or a person to conduct some activity over which the Commission has jurisdiction. Such permit may serve in lieu of any license which may otherwise be required or it may be necessary that the permit be secured in addition to adherence to regular license requirements, as the Commission may direct, in accordance with the provisions of this subchapter.

(b) Except as otherwise specifically provided by law, no one may engage in any activity as to which a permit is required without having first procured a current and valid permit.

(c) Under such circumstances and upon such terms and conditions as it may prescribe by regulation, the Commission may issue the following permits:

(1) Possession Permit.—Authorizes the possession of freshwater fish lawfully acquired. The Commission may by regulation implement the issuance and supervision of this permit, in accordance with governing laws and regulations respecting the possession of fish.

(2) Transportation Permit.—The Commission may require the use of transportation permits by persons required to be licensed under this article, or by persons and individuals exempt from license requirements, while

transporting within the State the fish described in subdivision (1) above, as necessary to discourage unlawful taking or dealing in such fish and to control and promote the orderly and systematic transportation of fish within, into, through, and out of the State. Transportation permits may be issued for such fish transported either dead or alive, in accordance with such restrictions as may reasonably be imposed. Where convenient, the Commission may require the retention and use of the license or permit authorizing the taking or acquisition of the fish as a transportation permit. Where circumstances warrant, however, the Commission may require a separate additional transportation permit. Any substantial deviation from reasonable requirements imposed by regulation or administratively under the authority of this section renders the transportation of the fish unlawful.

(3) Exportation or Importation Permit.—Authorizes the exportation or importation of the fish described in subdivision (1) above from or into the State. The Commission may by regulation implement the issuance and supervision of this permit, in accordance with governing laws and regulations respecting the exportation and importation of such fish.

(4) Other Permits.—In implementing the provisions of this subchapter, the Commission may require the use of such additional permits as may be necessary or desirable in carrying out the duties of the Commission. (1965, c. 957, s. 2.)

§ **113-275. General provisions respecting licenses.** — (a) The Commission is authorized to make agreements with other jurisdictions as to reciprocal honoring of licenses in the best interests of the conservation of inland fishing resources.

(b) Every license issued under the provisions of this article is effective beginning upon its date of issuance unless the license expressly provides to the contrary, in accordance with regulations of the Commission and such administrative authority to set future effective dates in particular types of cases as may be delegated by the Commission to responsible employees or agents.

(c) Every license issued under the provisions of this article must be sold for the full prescribed amount notwithstanding that a portion of the prescribed license period may have elapsed prior to the license application.

(d) In implementing the sale and distribution of licenses issued under this article, the Commission may require license applicants to disclose such information as necessary for determining the applicant's eligibility for a particular license. Such information as deemed desirable to assist in enforcement of license requirements may be required to be recorded on the face of any license. Fixing the form of the license may be by reasonable administrative directive, and requirements as to such form need not be embodied in regulations of the Commission in order to be validly required.

(e) Where employees of the Commission sell licenses of a type also sold through license agents, such employees must sell the licenses for the full amount and remit such full amount to the Commission without any deduction of the stipulated license agent's fee.

(f) Except as exemptions or exceptions may be provided in § 113-276:

(1) All licenses and permits under this article must be kept ready at hand by or about the person of individual licensees and permittees while engaged in the regulated operations;

(2) All licenses and permits under this article are nontransferable; and

(3) All individuals engaged in operations subject to license or permit requirements must have an individual license or permit—except where such individuals are in the employ of and under the supervision of someone who has the license or permit or acceptable evidence of the

same at hand and the activity is one for which a person not an individual may acquire a license.

(g) It is unlawful to buy, sell, lend, borrow, or in any other way transfer or receive or attempt to do any such things with respect to any nontransferable license or permit for the purpose of circumventing the requirements of this article.

(h) It is unlawful for any person engaged in regulated operations under this article to refuse to exhibit or display any required license, permit, or identification upon the request of any employee or agent of the Commission or of any officer authorized to enforce the provisions of this article.

(i) It is unlawful to refuse to comply with any provisions of this article or of regulations and administrative requirements reasonably promulgated under the authority of this article.

(j) It is a misdemeanor punishable in the discretion of the court for any person:

(1) Knowingly to engage in any activity regulated under this article with an improper, false, or altered license or permit;

(2) Knowingly to make any application for a license or permit to which he is not entitled;

(3) Knowingly to make any false, fraudulent, or misleading statement in applying for a license or permit under this article; or

(4) To counterfeit, alter, or falsify any application, license, or permit under this article. (1929, c. 335, ss. 6, 10, 11; 1945, c. 567, ss. 5, 6; 1961, c. 329; 1965, c. 957, s. 2.)

§ 113-276. Members of armed forces deemed residents; exemptions and exceptions.—(a) Members of the armed forces of the United States stationed at a military facility in North Carolina are deemed residents of the State for the purpose of purchasing a resident State hook-and-line fishing license.

(b) A person holding a license under § 113-273 may take the fish regulated in connection with his license without any additional license under such restrictions, including permit requirements, as the Commission may by regulation impose. Provided, that such a licensee may not take fish from public fishing waters for use in any licensed operation.

(c) Every landowner, his spouse, and dependent members of his family under twenty-one years of age residing with him may fish upon the land of such landowner without being subject to the hook-and-line fishing license requirements of § 113-271.

(d) An individual under sixteen years of age is exempt from the hook-and-line fishing license requirements of § 113-271 anywhere within the State if:

(1) He is accompanied by a responsible adult who is in compliance with any applicable license requirements; or

(2) He is carrying a current and valid license which has been issued to one of his parents or to his guardian.

(e) A resident individual fishing with hook and line in the county of his residence using natural bait is exempt from the hook-and-line fishing license requirements of § 113-271. "Natural bait" is bait which may be beneficially digested by fish.

(f) Special device licenses issued by the Commission under its authority to regulate the taking of nongame fish are not required in the following instances:

(1) When a landing net meeting the requirements set out below is used to take nongame fish in inland fishing waters.

(2) When a landing net is used to assist in taking fish in inland fishing waters when the initial and primary method of taking is by the use of hook and line. Provided, that such license requirements as may be applicable to the fishing with hook and line are met.

The landing net authorized for use under subdivision (1) above must have a handle not exceeding eight feet in length and a hoop or frame to which the net is attached not exceeding sixty inches along its outer perimeter. The license exemption as to the use of landing nets may not be construed to apply to other special fishing devices the use of which is regulated by the Commission.

(g) Bow nets which have been properly licensed by the Commission may be used in inland fishing waters designated for and used by persons other than the licensee with the permission of the licensee.

(h) The Commission may by regulation require persons subject to license requirements and persons exempt from license requirements to carry or produce such identification as may be necessary to substantiate the person's entitlement to a particular license or to a particular exemption from license requirements. (1929, c. 335, ss. 1, 10; 1945, c. 567, ss. 1, 6; 1951, c. 1112, s. 2; 1961, cc. 312, 329; 1963, c. 170; 1965, c. 957, s. 2.)

§ **113-277. Suspension and revocation of licenses or permits.**—(a) Upon conviction of any licensee or permittee under this article of a violation of any law or regulation administered by the Commission under the authority of this subchapter, the court in its discretion may order surrender of that license or permit plus any other license or permit issued by the Commission. The court may order suspension of any license or permit for some stipulated period or may order revocation of any license or permit for the remainder of the period for which it is valid. A period of suspension may extend past the expiration date of a license or permit, but no period of suspension longer than two years may be imposed. During any period of suspension or revocation, the licensee or permittee is not entitled to purchase or apply for any replacement, renewal, or additional license or permit regulating the same activity covered by the suspended or revoked license or permit. The Commission may by administrative action and by regulation devise procedures designed to implement license or permit suspensions and revocations that may be ordered by the courts.

(b) It is a misdemeanor punishable in the discretion of the court for any person during a period of suspension or revocation under the terms of this article:

(1) To engage in any activity licensed in this article without the appropriate license or permit;
(2) Knowingly to make any application for a license or permit to which he is not entitled;
(3) Knowingly to make any false, fraudulent, or misleading statement in applying for a license or permit under this article;
(4) To counterfeit, alter, or falsify any application, license, or permit under this article;
(5) Knowingly to retain and use any license or permit which has been ordered revoked or suspended under the terms of this article; or
(6) Wilfully to circumvent the terms of suspension or revocation in any manner whatsoever. (1965, c. 957, s. 2.)

§§ **113-278 to 113-290:** Reserved for future codification purposes.

Article 22.

Regulation of Inland Fisheries.

§ **113-291. General restrictions.**—Except as specifically permitted in this subchapter or in regulations made under the authority of this subchapter, no person may take, possess, buy, sell, or transport:

(1) Any fish taken from or found in inland fishing waters; or
(2) Any inland game fish. (1965, c. 957, s. 2.)

§ 113-292. Authority of Commission in regulation of inland fishing.—(a) The Commission is authorized to authorize, license, regulate, prohibit, prescribe, or restrict all fishing in inland fishing waters, and the taking of inland game fish in coastal fishing waters, with respect to:

(1) Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish;

(2) Seasons for taking fish;

(3) Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(b) The Commission is authorized to authorize, license, regulate, prohibit, prescribe, or restrict:

(1) The opening and closing of inland fishing waters, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Commission; and

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all inland fisheries resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Commission in carrying out its duties.

To the extent not in conflict with provisions enforced by the Department, the Commission may exercise the powers conferred in this subsection in coastal fishing waters pursuant to its regulation of inland game fish in such waters.

(c) The Commission is authorized to make such regulations pertaining to the acquisition, disposition, transportation, and possession of fish in connection with private ponds as may be necessary in carrying out the provisions of this subchapter and the overall objectives of the conservation of wildlife resources. (1965, c. 957, s. 2.)

§ 113-293. Regulation of floats and number of lines; obstructing rivers or creeks; keeping open fishways in dams. — (a) The Commission may not adopt any regulation to require the exclusive use of a float made of plastic or any other substance in connection with hook-and-line fishing in inland fishing waters. In regulating the technique known as "jug fishing," however, the Commission may restrict or prohibit the use of floats made of glass.

(b) The Commission may not adopt any regulation limiting the number of lines to be used by any fishermen fishing by hook and line in inland fishing waters. The Commission, however, may regulate the number of such lines used in designated public mountain trout waters.

(c) It is unlawful for any person in inland fishing waters:

(1) To set a net of any description across the main channel of any river or creek;

(2) To erect so as to extend more than three fourths of the distance across any river or creek any stand, dam, weir, hedge, or other obstruction to the passage of fish;

(3) To erect any stand, dam, weir, or hedge in any part of a river or creek required to be left open for the passage of fish; or,

(4) Having erected any dam where the same was allowed, to fail to make and keep open such slope or fishway as may be required by law to be kept open for the free passage of fish.

The provisions of this section may not be construed to conflict in any way with the laws and regulations of any other agency with jurisdiction over the activity or subject matter in question. (Code, ss. 3387-3389; Rev., s. 2457; 1909, c. 466, s. 1; 1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., ss. 1878, 1974; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1951, c. 1045, s. 1; 1953, cc. 774, 1251; 1963, c. 1097, s. 1; 1965, c. 957, s. 2.)

§ 113-294. Penalties for unlawfully selling or buying game fish. — Any person who unlawfully sells, possesses for sale, buys, or offers or attempts to buy any game fish is guilty of a misdemeanor punishable by a fine of not less than fifty dollars ($50.00) in addition to such other punishment as the court may impose in its discretion. (1965, c. 957, s. 2.)

§§ 113-295 to 113-300: Reserved for future codification purposes.

Article 23.

Administrative Provisions; Regulatory Authority of Commission.

§ 113-301. Filing and publication of regulations. — (a) All regulations of the Commission promulgated under the authority of this chapter or any other statutes, including provisions in chapters 75A and 143 of the General Statutes of North Carolina, must be filed with the Secretary of State in accordance with §§ 143-195 to 143-197. In addition, all such regulations of the Commission the violation of which constitutes a crime must be filed with the clerk of the superior court:

(1) Of every county in the State, in the case of regulations of general application; and

(2) Of the county or counties affected, in the case of special or local regulations affecting only a particular area.

(b) Regulations promulgated by the Commission under the authority of this subchapter must be published at least once in some newspaper published in and having general circulation throughout the State. (1965, c. 957, s. 2.)

§ 113-302. Prima facie evidence from unlawful possession of game fish.—The prima facie evidence provisions of § 113-103 respecting game apply equally to the possession of game fish in such establishments. (1965, c. 957, s. 2.)

§ 113-303. Arrest, service of process and witness fees of protectors.—All arrest fees and other fees that may be charged in any bill of costs for service of process by protectors must be paid to the county in which the trial is held. No witness fee may be taxed in any bill of costs by virtue of the appearance of a protector as a witness in a criminal case within his enforcement jurisdiction. Acceptance by any protector of any arrest fee, witness fee, or any other fee to which he is not entitled is a misdemeanor punishable in the discretion of the court. (1965, c. 957, s. 2.)

§ 113-304. Reciprocal agreements by Commission.—The Commission is empowered to make reciprocal agreements with other jurisdictions respecting the matters governed in this subchapter. Pursuant to such agreements the Commission may by regulation modify provisions of this subchapter in order to effectuate the purposes of such agreements, in the overall best interests of the conservation of wildlife resources. (1965, c. 957, s. 2.)

§ 113-305. Cooperative agreements by Commission. — The Commission is empowered to enter into cooperative agreements with public and private agencies and individuals respecting the matters governed in this subchapter. Pursuant to such agreements the Commission may expend funds, assign employees to additional duties within or without the State, assume additional responsibilities, and take other actions that may be required by virtue of such agreements, in the overall best interests of the conservation of wildlife resources. (1965, c. 957, s. 2.)

§ 113-306. Administrative authority of Commission; disposition of license funds; delegation of powers.—(a) In the overall best interests of the conservation of wildlife resources, the Commission may lease or purchase lands, equipment, and other property; accept gifts and grants on behalf of the State;

establish wildlife refuges, management areas, and boating and fishing access areas, either alone or in cooperation with others; provide matching funds for entering into projects with some other governmental agency or with some scientific, educational, or charitable foundation or institution; condemn lands in accordance with the provisions of chapter 40 of the General Statutes and other governing provisions of law; and sell, lease, or give away property acquired by it. Provided, that any private person selected to receive gifts or benefits by the Commission be selected:

(1) With regard to the overall public interest that may result; and

(2) From a defined class upon such a rational basis open to all within the class as to prevent constitutional infirmity with respect to requirements of equal protection of the laws or prohibitions against granting exclusive privileges or emoluments.

(b) All money credited to, held by, or to be received by the Commission from the sale of licenses authorized by this subchapter must be consolidated and placed in the Wildlife Resources Fund.

(c) The Commission may, within the terms of policies set by regulation, delegate to the Executive Director all administrative powers granted to it. (1965, c. 957, s. 2.)

§ **113-307. Adoption of federal laws and regulations.** — To the extent that the Commission is granted authority under this chapter or under any other provision of law, including chapter 75A of the General Statutes, over subject matter as to which there is concurrent federal jurisdiction, the Commission in its discretion may by reference in its regulations adopt relevant provisions of federal law and regulations as State regulations. To prevent confusion or conflict of jurisdiction in enforcement, the Commission may provide for an automatic incorporation by reference into its regulations of future changes within any particular set of federal laws or regulations relating to some subject clearly within the jurisdiction of the Commission. (1965, c. 957, s. 2.)

§§ **113-308 to 113-315**: Reserved for future codification purposes.

ARTICLE 24.

Miscellaneous Transitional Provisions.

§ **113-316. General statement of purpose and effect of revision of subchapter IV.**—To clarify the conservation laws of the State and the authority and jurisdiction of the Department of Conservation and Development and the North Carolina Wildlife Resources Commission: The Commissioner of Commercial Fisheries and the Division of Commercial Fisheries of the Department of Conservation and Development are renamed the Commissioner of Commercial and Sports Fisheries and the Division of Commercial and Sports Fisheries; the Commercial Fisheries Committee of the Department of Conservation and Development is renamed the Commercial and Sports Fisheries Committee; the Commercial Fisheries Advisory Board is abolished and in its stead is created the Commercial and Sports Fisheries Advisory Board; commercial fishing waters are renamed coastal fishing waters and the Division of Commercial and Sports Fisheries is given jurisdiction over and responsibility for the marine and estuarine resources in coastal fishing waters; the laws pertaining to commercial fishing operations regulated by the Department of Conservation and Development are consolidated and revised generally and broadened to reflect the jurisdictional change respecting coastal fisheries; and the connected and related laws pertaining to fisheries resources administered by the North Carolina Wildlife Resources Commission are recodified to harmonize in such revision and consolidation. (1965, c. 957, s. 1.)

§ 113-317. Effect of revision on powers of Department of Conservation and Development and Wildlife Resources Commission.—The intention of this subchapter is to continue and broaden the powers and authority of the Department of Conservation and Development and the North Carolina Wildlife Resources Commission with respect to all matters pertaining to the conservation of fisheries resources, except as specific modifications, qualifications, and restrictions may appear in this subchapter. The failure to carry forward any specific administrative or regulatory power contained in the former statutes in chapter 113 of the General Statutes is not to be deemed to deprive the Department or the Commission of the authority in question. The failure to carry forward any specific prohibitions contained in the former statutes in chapter 113 of the General Statutes or of local laws repealed by this subchapter does not indicate an intention to make lawful the activity formerly prohibited; in the absence of provisions in this subchapter respecting such activity, the Department and the Commission in their discretion may continue, modify, or abolish the previous prohibition through the passage of regulations. In numerous instances particular provisions contained in the former law are omitted from this codification in order to leave the matter within the discretionary power of the Board and the Commission. (1965, c. 957, s. 3.)

§ 113-318. Effect of change of names of Commissioner and Division of Commercial Fisheries to Commissioner and Division of Commercial and Sports Fisheries.—Upon the effective date of this subchapter the Commissioner of Commercial Fisheries and the Division of Commercial Fisheries of the Department of Conservation and Development are renamed the Commissioner of Commercial and Sports Fisheries and the Division of Commercial and Sports Fisheries of such Department respectively. The change of name is not intended to disrupt continuance of employment, tenure, seniority, or any other rule, regulation, provision of law, custom, or administrative practice presently applicable to the Commissioner and the Division of Commercial Fisheries and employees of the Division—except as changes are made necessary by provisions within this subchapter. In addition, all contracts and all other legal or official documents and provisions applicable to the Commissioner and the Division of Commercial Fisheries and employees of that Division are made continuingly applicable to the Commissioner and the Division of Commercial and Sports Fisheries and employees of the Division. In particular, subject to the provisions of this subchapter, all apropriations, credits, revenues, funds, moneys, obligations, equipment, vehicles, vessels, offices, and other property, privileges, rights, and duties pertaining to the Commissioner and the Division of Commercial Fisheries and employees of that Division are made fully applicable to the Commissioner and the Division of Commercial and Sports Fisheries and employees of the Division.

Upon the effective date of this subchapter all money and credit from any fund, including the Commercial Fisheries Fund, the Commercial Fisheries Experimental and Oyster Demonstration Fund, the fund provided for in former §§ 113-216.3 and 113-216.4 of the General Statutes, and the Special Commercial Fisheries Equipment Fund, are transferred to the general account of the Department of Conservation and Development for the use of the Division of Commercial and Sports Fisheries. Except as otherwise provided in this subchapter, all appropriations and receipts of the Department of Conservation and Development for the conservation of marine and estuarine resources must be paid into such general account for the use of the Division. Notwithstanding the provisions of this section, the Department must provide for separate accounting or funding for any receipts of the Division which are required by law to be restricted as to their purpose of expenditure. (1965, c. 957, s. 4.)

Editor's Note.—As to the effective date of this subchapter, see Editor's Note to § 113-127.

§ 113-319. Effect of change of name of Commercial Fisheries Committee to Commercial and Sports Fisheries Committee. — Upon the effective date of this subchapter, the Commercial Fisheries Committee of the Board of Conservation and Development is renamed the Commercial and Sports Fisheries Committee of such Board. The change of name is not intended to change the composition of the Committee or its status and all statutes, rules, regulations, bylaws, contracts, and other legal and official documents or provisions applicable to the Commercial Fisheries Committee are, unless contrary to the purposes of this subchapter, made continuingly applicable to the Commercial and Sports Fisheries Committee. (1965, c. 957, s. 5.)

Editor's Note.—As to the effective date of this subchapter, see Editor's Note to § 113-127.

§ 113-320. Dissolution of Commercial Fisheries Advisory Board; transfer of appropriations, property, privileges, etc., to Commercial and Sports Fisheries Advisory Board.—Upon the effective date of this subchapter, the Commercial Fisheries Advisory Board is dissolved. Upon the appointment of the Commercial and Sports Fisheries Advisory Board, the Advisory Board will become entitled to all appropriations, property, and privileges enjoyed by the Commercial Fisheries Advisory Board. To the extent appropriate to the purposes of this subchapter, all provisions in statutes, regulations, bylaws, contracts, and other legal or official documents or provisions applicable to the Commercial Fisheries Advisory Board are made applicable to the Commercial and Sports Fisheries Advisory Board. (1965, c. 957, s. 6.)

Editor's Note.—As to the effective date of this subchapter, see Editor's Note to § 113-127.

§ 113-321. Retention of boundary line between inland and commercial fishing waters; application of provisions as to commercial fishing waters to coastal fishing waters; regulation of fishing in joint fishing waters.—Subject to the power of future modification by the Board and Commission as provided in this subchapter, the existing boundary line between inland fishing waters and commercial fishing waters is retained as the boundary line between inland fishing waters and coastal fishing waters. Except as this subchapter provides otherwise, all statutes, regulations, bylaws, contracts, and other legal or official documents or provisions applicable to commercial fishing waters are made applicable to coastal fishing waters. Those areas of commercial fishing waters to which hook-and-line fishing license requirements of the North Carolina Wildlife Resources Commission applied on January 1, 1965, are to be deemed joint fishing waters, subject to modification by agreement between the Department of Conservation and Development and the Commission. Until such agreement provides otherwise, the Commission may continue to enforce license requirements and applicable inland fishing laws and regulations in such waters. (1965, c. 957, s. 7.)

Cross Reference.—See Editor's Note to § 113-127.

§§ 113-322 to 113-377.

Editor's Note.—See note to § 113-127.

§§ 113-377.1 to 113-377.7: Transferred to §§ 113-252 to 113-258 by Session Laws 1965, c. 957.

Article 25.

[Reserved.]

ARTICLE 26.

[Transferred.]

SUBCHAPTER IVA. REPEALS.

ARTICLE 26A.

Repeal of Acts.

§ **113-377.8. Repeal of certain public, public-local, special and private acts.** — The following public, public-local, special and private acts are hereby repealed: Chapter 36 of the Public Laws of 1901; chapter 113 of the Public Laws of 1901; chapter 260 of the Public Laws of 1901; chapter 308 of the Public Laws of 1901; chapter 326 of the Public Laws of 1901; chapter 370 of the Public Laws of 1901; chapter 431 of the Public Laws of 1901; chapter 435 of the Public Laws of 1901; chapter 475 of the Public Laws of 1901; chapter 589 of the Public Laws of 1901; chapter 673 of the Public Laws of 1901; chapter 702 of the Public Laws of 1901; chapter 771 of the Public Laws of 1901; chapter 131 of the Public Laws of 1903; chapter 414 of the Public Laws of 1903; chapter 520 of the Public Laws of 1903; chapter 631 of the Public Laws of 1903; chapter 650 of the Public Laws of 1903; chapter 658 of the Public Laws of 1903; chapter 668 of the Public Laws of 1903; chapter 732 of the Public Laws of 1903; chapter 752 of the Public Laws of 1903; chapter 86 of the Public Laws of 1905; chapter 265 of the Public Laws of 1905; chapter 283 of the Public Laws of 1905; chapter 351 of the Public Laws of 1905; chapter 363 of the Public Laws of 1905; chapter 500 of the Public Laws of 1905; chapter 560 of the Public Laws of 1905; chapter 386 of the Public Laws of 1907; chapter 572 of the Public Laws of 1907; chapter 690 of the Public Laws of 1907; chapter 811 of the Public Laws of 1907; chapter 977 of the Public Laws of 1907; chapter 426 of the Public Laws of 1909; chapter 466 of the Public Laws of 1909; chapter 585 of the Public Laws of 1909; chapter 755 of the Public Laws of 1909; chapter 871 of the Public Laws of 1909; chapter 525 of the Public-Local Laws of 1911; chapter 547 of the Public-Local Laws of 1911; chapter 572 of the Public-Local Laws of 1913; chapter 587 of the Public-Local Laws of 1913; chapter 402 of the Private Laws of 1913; chapter 58 of the Public-Local Laws, Extra Session of 1913; chapter 211 of the Public-Local Laws, Extra Session of 1913; chapter 30 of the Public Laws of 1915; chapter 180 of the Public Laws of 1915; chapter 610 of the Public-Local Laws of 1915; chapter 599 of the Public-Local Laws of 1917; chapter 202 of the Public-Local Laws, Extra Session 1920; chapter 114 of the Public-Local Laws of 1921; chapter 384 of the Public-Local Laws of 1921; chapter 432 of the Public-Local Laws of 1921; chapter 439 of the Public-Local Laws of 1921; chapter 157 of the Public-Local Laws, Extra Session of 1921; chapter 130 of the Public-Local Laws of 1923; chapter 352 of the Public-Local Laws of 1923; chapter 533 of the Public-Local Laws of 1923; chapter 548 of the Public-Local Laws of 1923; chapter 461 of the Public-Local Laws of 1925; chapter 623 of the Public-Local Laws of 1925; chapter 228 of the Public-Local Laws of 1927; chapter 208 of the Public-Local Laws of 1929; chapter 42 of the Public Laws of 1933; chapter 51 of the Public Laws of 1933; chapter 241 of the Public-Local Laws of 1933; chapter 575 of the Public-Local Laws of 1933; chapter 365 of the Public-Local Laws of 1935; chapter 368 of the Public-Local Laws of 1935; chapter 509 of the Public-Local Laws of 1935; chapter 513 of the Public-Local Laws of 1935; chapter 352 of the Public Laws of 1937; chapter 266 of the Public-Local Laws of 1937; chapter 632 of the Public-Local Laws of 1937; chapter 265 of the Public Laws of 1939; chapter 138 of the Public-Local Laws of 1939; chapter 179 of the Public-Local Laws of 1939; chapter 335 of the Public-Local Laws of 1941; chapter 221 of the Special Laws of 1947; chapter 485 of the Special Laws of 1947; chapter 1017 of the Special Laws of 1947; chapter 1031 of the Special Laws of 1949.

Provided that any public, public-local, special or private law herein repealed may be covered by a regulation of the Board of Conservation and Development to effectuate the same privileges or protection therein provided upon the petition of either the representative or senator from that county or district filed within six (6) months from the date of ratification. (1951, c. 1045, s. 2.)

Editor's Note. — The words "Special Laws" in the last three lines of the first paragraph were apparently intended to read "Session Laws."

SUBCHAPTER V. OIL AND GAS CONSERVATION.

Article 27.

Oil and Gas Conservation.

Part 1. General Provisions.

§ **113-378. Persons drilling for oil or gas to register and furnish bond.**—Any person, firm or corporation before making any drilling exploration in this State for oil or natural gas shall register with the Department of Conservation and Development or such other State agency as may hereafter be established to control the conservation of oil or gas in this State. To provide for such registration, the drilling operator must furnish the name and address of such person, firm or corporation, and the location of the proposed drilling operations, and file with the aforesaid Department of Conservation and Development a bond in the amount of two thousand five hundred dollars ($2,500.00) running to the State of North Carolina, conditioned that any well opened by the drilling operator upon abandonment shall be plugged in accordance with the rules and regulations of said Department of Conservation and Development. (1945, c. 765, s. 2.)

§ **113-379. Filing log of drilling and development of each well.**— Upon the completion or shutting down of any abandoned well, the drilling operator shall file with the Department of Conservation and Development or other State agency, or with any division thereof hereinafter created for the regulation of drilling for oil or natural gas, a complete log of the drilling and development of each well. (1945, c. 765, s. 3.)

§ **113-380. Violation a misdemeanor.**—Any person, firm or officer of a corporation violating any of the provisions of §§ 113-378 or 113-379 shall upon conviction thereof be guilty of a misdemeanor and shall be fined not less than five hundred dollars ($500.00) nor more than two thousand dollars ($2,000.00) and may in the discretion of the court be imprisoned for not more than two years. (1945, c. 765, s. 4.)

Part 2. Provisions Dependent upon Action of Governor.

§ **113-381. Title.**—This law shall be designated and known as the Oil and Gas Conservation Act. (1945, c. 702, s. 1.)

Editor's Note.—For discussion of Session Laws 1945, c. 702, see 23 N.C.L. Rev. 332.

§ **113-382. Declaration of policy.**—If and when there should be discovered natural oil and/or natural gas within this State as a result of prospecting therefor by the drilling of wells, and where the discovery thereof in commercial quantities has been called to the attention of the Governor and Council of State, the Governor shall thereupon, with the advice of the Council of State, proclaim and declare this law to be in full force and effect, and shall proceed with the necessary action to see that the provisions of this law are carried out.

The General Assembly, in recognition of imminent evils that can occur in the production and use and waste thereof in the absence of coequal or correlative rights of owners of crude oil or natural gas in a common source of supply to produce and use the same, this law is enacted for the protection of public and private interests against such evils by prohibiting waste and compelling ratable production. (1945, c. 702, s. 2.)

§ **113-383. Petroleum Division created; members; terms of office; compensation and expenses.**—Subject to the provisions of § 113-382, there is hereby established in the Department of Conservation and Development a division thereof to be known as the "Petroleum Division," hereinafter in this law called "the Division," which Division shall be composed of the Director of the Department of Conservation and Development and the State Geologist as ex officio members thereof, and three members of the Board of Conservation and Development, to be designated by the Governor, the members so designated to serve on said Division for a term of two years, or until their successors are designated. The successors of said members of said Division shall be designated biennially by the Governor. Any vacancies of said Division may be filled by the Governor. The said Division shall designate one of its members, or such other person as it may select, to act as secretary thereof, unless a director of production and conservation is appointed as hereinafter provided. The members of the aforesaid Petroleum Division, other than the ex officio members thereof, shall receive the same per diem compensation for attending meetings thereof, and shall be allowed the same expenses, as are allowed to members of the Board of Conservation and Development at meetings thereof. (1945, c. 702, s. 3.)

§ **113-384. Quorum.** — A majority of said Division shall constitute a quorum, and three affirmative votes shall be necessary for adoption or promulgation of any rules, regulations or orders. (1945, c. 702, s. 4.)

§ **113-385. Power to administer oaths.** — Any member of the Division, or the secretary thereof, shall have power to administer oaths to any witness in any hearing, investigation or proceeding contemplated by this law or by any other law of this State relating to the conservation of oil or gas. (1945, c. 702, s. 5.)

§ **113-386. Director of production and conservation and other employees; duties of secretary; Attorney General to furnish legal services.** —The Division may with the approval of the Governor appoint one director of production and conservation at a salary to be fixed by the Governor, and such other assistants, petroleum and natural gas engineers, bookkeepers, auditors, gaugers and stenographers, and other employees as may be necessary properly to administer and enforce the provisions of this law.

The director of production and conservation, when appointed, shall be ex officio secretary of the Division, and shall keep all minutes and records of said Division and, in addition thereto, shall collect and remit to the State Treasurer all moneys collected. He shall, as such secretary, give bond in such sum as the Division may direct with corporate surety to be approved by the Division, conditioned that he will well and truly account for all funds coming into his hands as such secretary.

The Attorney General shall furnish the required legal services and shall be given such additional assistants as he may deem to be necessary therefor. (1945, c. 702, s. 6.)

§ **113-387. Production of crude oil and gas regulated; tax assessments.** — All common sources of supply of crude oil discovered after January first, one thousand nine hundred and forty-five, if so found necessary by the Division, shall have the production of oil therefrom controlled or regulated in accordance with the provisions of this law, and the Division is hereby authorized to assess from time to time against each barrel of oil produced and saved a tax not to exceed five (5) mills on each barrel. All moneys so collected shall be used solely to pay the expenses and other costs in connection with the administration of this law.

All common sources of supply of natural gas discovered after January first, one thousand nine hundred and forty-five, if so found necessary by the Division, shall have the production of gas therefrom controlled or regulated in accordance with the provisions of this law, and the Division is hereby authorized to assess from time to time against each thousand cubic feet of gas produced and saved from a gas well a tax not to exceed one half (½) mill on each one thousand cubic feet of gas. All moneys so collected shall be used solely to pay the expenses and other costs in connection with the administration of this law. (1945, c. 702, s. 7.)

§ **113-388. Collection of assessments.** — Any person purchasing oil or gas in this State at the well, under any contract or agreement requiring payment for such production to the respective owners thereof, in respect of which production any sums assessed under the provisions of § 113-387 are payable to the Division, is hereby authorized, empowered and required to deduct from any sums so payable to any such person the amount due the Division by virtue of any such assessment and remit that sum to the Division.

Further, any person taking oil or gas from any well in this State for use or resale, in respect of which production any sums assessed under the provisions of § 113-387 are payable to the Division, shall remit any sums so due to the Division in accordance with those rules and regulations of the Division which may be adopted in regard thereto. (1945, c. 702, s. 8.)

§ **113-389. Definitions.**—Unless the context otherwise requires, the words defined in this section shall have the following meaning when found in this law:

(1) "Division" shall mean the "Petroleum Division," as created by this law.

(2) "Field" shall mean the general area which is underlaid or appears to be underlaid by at least one pool; and "field" shall include the underground reservoir or reservoirs containing crude petroleum oil or natural gas, or both. The words "field" and "pool" mean the same thing when only one underground reservoir is involved; "field," unlike "pool," may relate to two or more pools.

(3) "Gas" shall mean all natural gas, including casing-head gas, and all other hydrocarbons not defined as oil in subdivision (7).

(4) "Illegal gas" shall mean gas which has been produced within the State of North Carolina from any well during any time that well has produced in excess of the amount allowed by any rule, regulation or order of the Division, as distinguished from gas produced within the State of North Carolina from a well not producing in excess of the amount so allowed, which is "legal gas."

(5) "Illegal oil" shall mean oil which has been produced within the State of North Carolina from any well during any time that that well has produced in excess of the amount allowed by rule, regulation or order of the Division, as distinguished from oil produced within the State of North Carolina from a well not producing in excess of the amount so allowed, which is "legal oil."

(6) "Illegal product" shall mean any product of oil or gas, any part of which was processed or derived, in whole or in part, from illegal oil or illegal gas or from any product thereof, as distinguished from "legal product," which is a product processed or derived to no extent from illegal oil or illegal gas.

(7) "Oil" shall mean crude petroleum oil, and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas after it leaves the reservoir.

(8) "Owner" shall mean the person who has the right to drill into and to produce from any pool, and to appropriate the production either for himself or for himself and others.

(9) "Person" shall mean any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind.

(10) "Pool" shall mean an underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both. Each zone of a general structure which is completely separated from the other zone in the structure is covered by the term "pool" as used herein.

(11) "Producer" shall mean the owner of a well or wells capable of producing oil or gas, or both.

(12) "Product" means any commodity made from oil or gas and shall include refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casing-head gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or by-products derived from oil or gas, and blends or mixtures of two or more liquid products or by-products derived from oil or gas, whether hereinabove enumerated or not.

(13) "Tender" shall mean a permit or certificate of clearance for the transportation of oil, gas or products, approved and issued or registered under the authority of the Division.

(14) "Waste" in addition to its ordinary meaning, shall mean "physical waste" as that term is generally understood in the oil and gas industry. It shall include:

a. The inefficient, excessive or improper use or dissipation of reservoir energy; and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner which results, or tends to result, in reducing inefficiently the quantity of oil or gas ultimately to be recovered from any pool in this State.

b. The inefficient storing of oil, and the locating, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner causing, or tending to cause, unnecessary or excessive surface loss or destruction of oil or gas.

c. Abuse of the correlative rights and opportunities of each owner of oil and gas in a common reservoir due to nonuniform, disproportionate, and unratable withdrawals causing undue drainage between tracts of land.

d. Producing oil or gas in such manner as to cause unnecessary water channelling or coning.

e. The operation of any oil well or wells with an inefficient gas-oil ratio.

f. The drowning with water of any stratum or part thereof capable of producing oil or gas.

g. Underground waste however caused and whether or not defined.

h. The creation of unnecessary fire hazards.

i. The escape into the open air, from a well producing both oil and gas, of gas in excess of the amount which is necessary in the efficient drilling or operation of the well.

j. Permitting gas produced from a gas well to escape into the air. (1945, c. 702, s. 9.)

§ **113-390. Waste prohibited.**—Waste of oil or gas as defined in this law is hereby prohibited. (1945, c. 702, s. 10.)

§ 113-391. Jurisdiction and authority of Petroleum Division; rules, regulations and orders.—The Division shall have jurisdiction and authority of and over all persons and property necessary to administer and enforce effectively the provisions of this law and all other laws relating to the conservation of oil and gas.

The Division shall have the authority and it shall be its duty to make such inquiries as it may think proper to determine whether or not waste over which it has jurisdiction exists or is imminent. In the exercise of such power the Division shall have the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, tanks, refineries, and means of transportation; to hold hearings; and to provide for the keeping of records and the making of reports; and to take such action as may be reasonably necessary to enforce this law.

The Division shall have authority to make, after hearing and notice as hereinafter provided, such reasonable rules, regulations and orders as may be necessary from time to time in the proper administration and enforcement of this law, including rules, regulations or orders for the following purposes:

(1) To require the drilling, casing and plugging of wells to be done in such manner as to prevent the escape of oil or gas out of one stratum to another; to prevent the intrusion of water into an oil or gas stratum from a separate stratum; to prevent the pollution of fresh water supplies by oil, gas or salt water; and to require reasonable bond condition for the performance of the duty to plug each dry or abandoned well.

(2) To require directional surveys upon application of any owner who has reason to believe that a well or wells of others has or have been drilled into the lands owned by him or held by him under lease. In the event such surveys are required, the costs thereof shall be borne by the owners making the request.

(3) To require the making of reports showing the location of oil and gas wells, and the filing of logs and drilling records.

(4) To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas in paying quantities, and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.

(5) To require the operation of wells with efficient gas-oil ratios, and to fix such ratios.

(6) To prevent "blow-outs," "caving" and "seepage" in the sense that conditions indicated by such terms are generally understood in the oil and gas business.

(7) To prevent fires.

(8) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures and all storage and transportation equipment and facilities.

(9) To regulate the "shooting," perforating, and chemical treatment of wells.

(10) To regulate secondary recovery methods, including the introduction of gas, air, water or other substances into producing formations.

(11) To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as herein defined.

(12) To require; either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil or gas.

(13) To regulate the spacing of wells and to establish drilling units.

(14) To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage.

(15) To prevent where necessary the use of gas for the manufacture of carbon black. (1945, c. 702, s. 11.)

§ 113-392. Protecting pool owners; drilling units in pools; location of wells; shares in pools.—(a) Whether or not the total production from a pool be limited or prorated, no rule, regulation or order of the Division shall be such in terms or effect

(1) That it shall be necessary at any time for the producer from, or the owner of, a tract of land in the pool, in order that he may obtain such tract's just and equitable share of the production of such pool, as such share is set forth in this section, to drill and operate any well or wells on such tract in addition to such well or wells as can produce without waste such share, or

(2) As to occasion net drainage from a tract unless there be drilled and operated upon such tract a well or wells in addition to such well or wells thereon as can produce without waste such tract's just and equitable share, as set forth in this section, of the production of such pool.

(b) For the prevention of waste and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, the Division shall, after a hearing, establish a drilling unit or units for each pool. The Division may establish drainage units of uniform size for the entire pool or may, if the facts so justify, divide into zones any pool, establish a drainage unit for each zone, which unit may differ in size from that established in any other zone; and the Division may from time to time, if the facts so justify, change the size of the unit established for the entire pool or for any zone or zones, or part thereof, establishing new zones and units if the facts justify their establishment.

(c) Each well permitted to be drilled upon any drilling unit shall be drilled approximately in the center thereof, with such exception as may reasonably be necessary where it is shown, after notice and upon hearing, and the Division finds that the unit is partly outside the pool or, for some other reason, a well approximately in the center of the unit would be nonproductive or where topographical conditions are such as to make the drilling approximately in the center of the unit unduly burdensome. Whenever an exception is granted, the Division shall take such action as will offset any advantage which the person securing the exception may have over producers by reason of the drilling of the well as an exception, and so that drainage from developed units to the tract with respect to which the exception is granted will be prevented or minimized and the producer of the well drilled as an exception will be allowed to produce no more than his just and equitable share of the oil and gas in the pool, as such share is set forth in this section.

(d) Subject to the reasonable requirements for prevention of waste, a producer's just and equitable share of the oil and gas in the pool (also sometimes referred to as a tract's just and equitable share) is that part of the authorized production for the pool (whether it be the total which could be produced without any restriction on the amount of production, or whether it be an amount less than that which the pool could produce if no restriction on the amount were imposed) which is substantially in the proportion that the quantity of recoverable oil and gas in the developed area of his tract in the pool bears to the recoverable oil and gas in the total developed area of the pool, insofar as these amounts can be ascertained practically; and to that end, the rules, regulations, permits and orders of the Division shall be such as will prevent or minimize reasonably avoidable net drainage from each developed unit (that is, drainage which is not equalized by counter-drainage), and will give to each producer the opportunity to use his just and equitable share of the reservoir energy. (1945, c. 702, s. 12.)

§ 113-393. Development of lands as drilling unit by agreement or order of Division.—(a) Integration of Interests and Shares in Drilling Unit.—When two or more separately owned tracts of land are embraced within an established drilling unit, the owners thereof may agree validly to integrate their interests and to develop their lands as a drilling unit. Where, however, such owners have not agreed to integrate their interests, the Division shall, for the prevention of waste or to avoid drilling of unnecessary wells, require such owners to do so and to develop their lands as a drilling unit. All orders requiring such integration shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and will afford to the owner of each tract the opportunity to recover or receive his just and equitable share of the oil and gas in the pool without unnecessary expense, and will prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counter-drainage. The portion of the production allocated to the owner of each tract included in a drilling unit formed by an integration order shall, when produced, be considered as if it had been produced from such tract by a well drilled thereon.

In the event such integration is required, and provided also that after due notice to all the owners of tracts within such drilling unit of the creation of such drilling unit, and provided further that the Division has received no protest thereto, or request for hearing thereon, whether or not ten days have elapsed after notice has been given of the creation of the drilling unit, the operator designated by the Division to develop and operate the integrated unit shall have the right to charge to each other interested owner the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision, and the operator shall have the right to receive the first production from the well drilled by him thereon, which otherwise would be delivered or paid to the other parties jointly interested in the drilling of the well, so that the amount due by each of them for his shares of the expense of drilling, equipping, and operating the well may be paid to the operator of the well out of production, with the value of the production calculated at the market price in the field at the time such production is received by the operator or placed to his credit. After being reimbursed for the actual expenditures for drilling and equipping and operating expenses incurred during the drilling operations and until the operator is reimbursed, the operator shall thereafter pay to the owner of each tract within the pool his ratable share of the production calculated at the market price in the field at the time of such production less the reasonable expense of operating the well. In the event of any dispute relative to such costs, the Division shall determine the proper costs.

(b) When Each Owner May Drill.—Should the owners of separate tracts embraced within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on the unit, and should it be established that the Division is without authority to require integration as provided for in subdivision (a) of this section, then, subject to all other applicable provisions of this law, the owner of each tract embraced within the drilling unit may drill on his tract, but the allowable production from each tract shall be such proportion of the allowable for the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

(c) Cooperative Development Not in Restraint of Trade.—Agreements made in the interests of conservation of oil or gas, or both, or for the prevention of waste, between and among owners or operators, or both, owning separate holdings in the same oil or gas pool, or in any area that appears from geological or other data to be underlaid by a common accumulation of oil or gas, or both, or between and among such owners or operators, or both, and royalty owners therein, of a pool or area, or any part thereof, as a unit for establishing and carrying out a plan for the cooperative development and operation thereof, when such agreements are approved by the Division, are hereby authorized and shall not be held or construed to violate any of the statutes of this State relating to trusts, monopolies, or contracts and combinations in restraining of trade.

(d) Variation from Vertical.—Whenever the Division fixes the location of any well or wells on the surface, the point at which the maximum penetration of such wells into the producing formation is reached shall not unreasonably vary from the vertical drawn from the center of the hole at the surface, provided, that the Division shall prescribe rules, regulations and orders governing the reasonableness of such variation. (1945, c. 702, s. 13.)

§ **113-394. Limitations on production; allocating and prorating "allowables".** — (a) Whenever the total amount of oil, including condensate, which all the pools in the State can produce, exceeds the amount reasonably required to meet the reasonable market demand for oil, including condensate, produced in this State, then the Division shall limit the total amount of oil, including condensate, which may be produced in the State by fixing an amount which shall be designated "allowable" for this State, which will not exceed the reasonable market demand for oil, including condensate, produced in this State. The Division shall then allocate or distribute the "allowable" for the State among the pools on a reasonable basis and in such manner as to avoid undue discrimination, and so that waste will be prevented. In allocating the "allowable" for the State, and in fixing "allowables" for pools producing oil or hydrocarbons forming condensate, or both oil and such hydrocarbons, the Division shall take into account the producing conditions and other relevant facts with respect to such pools, including the separate needs for oil, gas and condensate, and shall formulate rules setting forth standards or a program for the distribution of the "allowable" for the State, and shall distribute the "allowable" for the State in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or programs shall be applied to such pools and areas so that as far as practicable a uniform program will be followed; provided, however, the Division shall permit the production of a sufficient amount of natural gas from any pool to supply adequately the reasonable market demand for such gas for light and fuel purposes if such production can be obtained without waste, and the condensate "allowable" for such pool shall not be less than the total amount of condensate produced or obtained in connection with the production of the gas "allowable" for light and fuel purposes, and provided further that, if the amount allocated to pool as its share of the "allowable" for the State is in excess of the amount which the pool should produce to prevent waste, then the Division shall fix the "allowable" for the pool so that waste will be prevented.

(b) The Division shall not be required to determine the reasonable market demand applicable to any single pool except in relation to all pools producing oil of similar kind and quality and in relation to the demand applicable to the State, and in relation to the effect of limiting the production of pools in the State. In allocating "allowables" to pools, the Division shall not be bound by nominations or desires of purchasers to purchase oil from particular fields or areas, and the Division shall allocate the "allowable" for the State in such manner as will prevent undue discrimination against any pool or area in favor of another or others which would result from selective buying or nominating by purchasers of oil, as such term "selective buying or nominating" is understood in the oil business.

(c) Whenever the Division limits the total amount of oil or gas which may be produced in any pool in this State to an amount less than that which the pool could produce if no restrictions were imposed (which limitation may be imposed either incidental to, or without, a limitation of the total amount of oil or gas which may be produced in the State), the Division shall prorate or distribute the "allowable" production among the producers in the pool on a reasonable basis, and so that each producer will have the opportunity to produce or receive his just and equitable share, as such share is set forth in subsection I of section nine of this law [§ 113-

392, subsec. (d)], subject to the reasonable necessities for the prevention of waste.

(d) Whenever the total amount of gas which can be produced from any pool in this State exceeds the amount of gas reasonably required to meet the reasonable market demand therefrom, the Division shall limit the total amount of gas which may be produced from such pool. The Division shall then allocate or distribute the allowable production among the developed areas in the pool on a reasonable basis, so that each producer will have the opportunity to produce his just and equitable share, as such share is set forth in subsection one of section nine of this law [§ 113-392, subsec. (d)] whether the restriction for the pool as a whole is accomplished by order or by the automatic operation of the prohibitory provisions of this law. As far as applicable, the provisions of subsection (a) of this section shall be followed in allocating any "allowable" of gas for the State.

(e) After the effective date of any rule, regulation, or order of the Division fixing the "allowable" production of oil or gas, or both, or condensate, no person shall produce from any well, lease, or property more than the "allowable" production which is fixed, nor shall such amount be produced in a different manner than that which may be authorized. (1945, c. 702, s. 14.)

Editor's Note.—Subsection (c) and (d) of this section refer to "subsection I" and to "subsection one" of "section nine of this law." Apparently the references should have been to subsection (d) of "section twelve of this law," codified herein as § 113-392.

§ **113-395. Notice and payment of fee to Division before drilling or abandoning well; plugging abandoned well.**—Before any well, in search of oil or gas, shall be drilled, the person desiring to drill the same shall notify the Division upon such form as it may prescribe and shall pay a fee of fifty dollars ($50.00) for each well. The drilling of any well is hereby prohibited until such notice is given and such fee has been paid and permit granted.

Each abandoned well and each dry hole promptly shall be plugged in the manner and within the time required by regulations to be prescribed by the Division, and the owner of such well shall give notice, upon such form as the Division may prescribe, of the abandonment of each dry hole and of the owner's intention to abandon, and shall pay a fee of fifteen dollars ($15.00). No well shall be abandoned until such notice has been given and such fee has been paid. (1945, c. 702, s. 15.)

§ **113-396. Wells to be kept under control.**—In order to protect further the natural gas fields and oil fields in this State, it is hereby declared to be unlawful for any person to permit negligently any gas or oil well to go wild or to get out of control. The owner of any such well shall, after twenty-four (24) hours' written notice by the Division given to him or to the person in possession of such well, make reasonable effort to control such well.

In the event of the failure of the owner of such well within twenty-four (24) hours after service of the notice above provided for, to control the same, if such can be done within the period, or to begin in good faith upon service of such notice, operations to control such well, or upon failure to prosecute diligently such operations, then the Division shall have the right to take charge of the work of controlling such well, and it shall have the right to proceed, through its own agents or by contract with a responsible contractor, to control the well or otherwise to prevent the escape or loss of gas or oil from such well all at the reasonable expense of the owner of the well. In order to secure to the Division the payment of the reasonable cost and expense of controlling or plugging such well, the Division shall retain the possession of the same and shall be entitled to receive and retain the rents, revenues and income therefrom until the costs and expenses incurred by the Division shall be repaid. When all such costs and expenses have been repaid, the Division shall restore possession of such well to the owner; provided, that in the event the income received by the Division shall not be sufficient to reimburse the Division as provided for in this section, the Division shall have a lien or privilege upon all of the property of the owner of such well, except such as is exempt by law, and the Division shall proceed to enforce such lien or privilege by suit brought in any court of competent jurisdiction, the same as any other civil action, and the judgment so obtained shall be executed in the same manner now provided by law for execution of judgments. Any excess over the amount due the Division which the property seized and sold may bring, after payment of court costs, shall be paid over to the owner of such well. (1945, c. 702, s. 16.)

§ **113-397. Hearing before Division; notice; rules, regulations or orders; public records and copies as evidence.**—(a) The Division shall prescribe its rules of order or procedure in hearings or other proceedings before it under this law, but in all hearings the rules of evidence as established by law shall be applied; provided, however, that the procedure before the Division shall be summary.

(b) No rule, regulation or order, including change, renewal, or extension thereof, shall, in the absence of an emergency, be made by the Division under the provisions of this law except after a public hearing upon at least seven days' notice given in such form as may be prescribed by the Division. Such public hearing shall be held at such time, place, and in such manner as may be prescribed by the Division, and any person having any interest in the subject matter of the hearing shall be entitled to be heard.

(c) In the event an emergency is found to exist by the Division which in its judgment requires the making, changing, renewal or extension of a rule, regulation or order without first having a hearing, such emergency rule, regulation or order shall have the same validity as if a hearing with respect to the same had been held after due notice. The emergency rule, regulation or order permitted by this section shall remain in force no longer than ten days from its effective date, and, in any event, it shall expire when the rule, regulation or order made after due notice and hearing with respect to the subject matter of such emergency rule, regulation or order becomes effective.

(d) Should the Division elect to give notice by personal service, such service may be made by any officer authorized to serve process or by any agent of the Division in the same manner as is provided by law for the service of summons in civil actions in the superior courts of this State. Proof of the service by such agent shall be by the affidavit of the person making personal service.

(e) All rules, regulations and orders made by the Division shall be in writing and shall be entered in full by the director of production and conservation in a book to be kept for such purpose by the Division, which book shall be a public record and be open to inspection at all times during reasonable office hours. A copy of such rule, regulation or order, certified by such director of production and conservation, shall be received in evidence in all courts of this State with the same effect as the original.

(f) Any interested person shall have the right to have the Division call a hearing for the purpose of taking action in respect of any matter within the jurisdiction of the Division by making a request therefor in writing. Upon the receipt of any such request, the Division shall promptly call a hearing thereon, and, after such hearing, and with all convenient speed and in any event within thirty days after the conclusion of such hearing, shall take such action with regard to the subject matter thereof as it may deem appropriate. (1945, c. 702, s. 17.)

§ **113-398. Procedure and powers in hearings by Division.** — In the exercise and enforcement of its jurisdiction, the said Division is authorized to summon witnesses, administer oaths, make ancillary orders and require the production of records and books for the purpose of examination at any hearing or investigation conducted by it. In connection with the exercise and enforcement of its jurisdiction, the Division shall also have the right and authority to certify as for contempt, to the court of any county having jurisdiction, violations by any person of any of the provisions of this article or of the rules, regulations or orders of the Division, and if it be found by said court that such person has knowingly and willfully violated same, then such person shall be punished as for contempt in the same manner and to the same extent and with like effect as if said contempt had been of an order, judgment or decree of the court to which said certification is made. (1945, c. 702, s. 18.)

§ **113-399. Suits by Division.**—The said Division shall have the right to maintain an action in any court of competent jurisdiction within this State to enforce by injunction, mandatory injunction, and any other appropriate or legal or equitable remedy, any valid rule, order or regulation made by the Division or promulgated under the provisions of this article, and said court shall have the authority to make and render such judgments, orders and decrees as may be proper to enforce any such rules, orders and regulations made and promulgated by the Division. (1945, c. 702, s. 19.)

§ **113-400. Assessing costs of hearings.** — The said Division is hereby authorized and directed to tax and assess against the parties involved in any hearing the costs incurred therein. (1945, c. 702, s. 20.)

§ **113-401. Party to hearings; review.** — The term "party" as used in this article shall include any person, firm, corporation or association. In proceedings for review of an order or decision of said Division, the Division shall have all rights and privileges granted by this article to any other party to such proceedings. (1945, c. 702, s. 21.)

§ **113-402. Rehearings.**—Any party being dissatisfied with any order or decision of the said Division may, within ten (10) days from the date of the service of such order or decision, apply for a rehearing in respect to any matter determined therein; the application shall be granted or denied by the Division within ten (10) days from the date same shall be filed, and if the rehearing be not granted within ten (10) days, it shall be taken as denied. If a rehearing be granted, the matter shall be determined by the Division within thirty (30) days after the same shall be submitted. No cause of action arising out of any order or decision of the Division shall accrue in any court to any party unless such party makes application for a rehearing as herein provided. Such application shall set forth specifically the ground or grounds on which the applicant considers such order or decision to be unlawful or unreasonable. No party shall, in any court, urge or rely upon any ground not set forth in said application. An order made after a rehearing, abrogating, changing or modifying the original order or decision, shall have the same force and effect as an original order. (1945, c. 702, s. 22.)

§ **113-403. Application for court review; copy served on director who shall notify parties.**—Within thirty (30) days after the application for a rehearing is denied, or if the application is granted, then within thirty (30) days after the rendition of the decision on rehearing, the applicant may apply to the court of the county in which the order of the Division is to become effective for a review of such order or decision; if the order of the Division is to become effective in more than one county, the application for review shall be filed in the office of the clerk of the superior court of the county mentioned above, and shall specifically state the grounds for review upon which the applicant relies and shall designate the order or decision sought to be reviewed. The clerk of the superior court shall immediately send a certified copy thereof, by registered mail, to the director of production and conservation. The director shall immediately notify all parties who appeared in the proceedings before the Division by registered mail, that such application for review has been filed. (1945, c. 702, s. 23.)

§ 113-404. Transcript transmitted to clerk of superior court; scope of review; procedure in superior court and upon appeal to Supreme Court.—The director of production and conservation, upon receipt of said copy of the application for review, shall forthwith transmit to the clerk of the superior court in which the application has been filed, a certified transcript of all pleadings, applications, proceedings, orders or decisions of the Division and of the evidence heard by the Division on the hearings of the matter or cause; provided, that the parties, with the consent and approval of the Division, may stipulate in writing that only certain portions of the record be transcribed. Said proceedings for review shall be for the purpose of having the lawfulness or reasonableness of the original order or decision, or the order or decision on rehearing, inquired into and determined, and the superior court hearing said cause shall have the power to vacate or set aside such order or decision on the ground that such order or decision is unlawful or unreasonable. After the said transcript shall be filed in the office of the clerk of the superior court of the county in which the application is filed, the judge of said superior court may, on his motion, or on application of any parties interested therein, make an order fixing a time for the filing of abstracts and briefs and shall fix a day for the hearing of such cause. All proceedings under this section shall have precedence in any court in which they may be pending, and the hearing of the cause shall be by the court without the intervention of a jury. An appeal shall lie to the Supreme Court of this State from orders, judgments and decisions made by the superior court. The procedure upon the trial of such proceedings in the superior court and upon appeal to the Supreme Court of this State shall be the same as in other civil actions, except as herein provided. No court of this State shall have power to set aside, modify or vacate any order or decision of the Division except as herein provided. (1945, c. 702, s. 24.)

§ 113-405. Introduction of new or additional evidence in superior court; hearing of additional material evidence by Division. — No new or additional evidence may be introduced upon the trial of any proceedings for review under the provisions of this article, but the cause shall be heard upon the questions of fact and law presented by the evidence and exhibits introduced before the Division and certified to it: Provided, that if it shall be shown to the satisfaction of the court that any party to said proceeding has additional material evidence which could not, by the exercise of due diligence, have been produced at the hearing before the Division, or which for some good reason it was prevented from producing at such hearing, or if upon the trial of the proceeding the court shall find that the Division has erroneously refused to admit or consider material evidence offered by any party at the hearing before the Division, the court may, in its discretion, stay the proceedings and make an order directing the Division to hear and consider such evidence. In such cases, it shall be the duty of the Division immediately to hear and consider such evidence and make an order modifying, setting aside or affirming its former decision. The Division after hearing and considering such additional evidence shall vacate, modify, or affirm its decision and a transcript of the additional evidence and the order or decision of the Division shall be certified and forwarded to the clerk of the superior court in which such proceeding is pending and said superior court shall on the motion of any interested party, order the trial to proceed upon the transcript as supplemented, so as to enable the court to properly determine if the order or decision of the Division as originally made or as modified is in any respect unlawful or unreasonable. (1945, c. 702, s. 25.)

§ 113-406. Effect of pendency of review; stay of proceedings.—The filing or pendency of the application for review provided for in this article shall not in itself stay or suspend the operation of any order or decision of the Division, but, during the pendency of such proceeding the court, in its discretion, may stay or suspend, in whole or in part, the operation of the order or decision of the Division. No order so staying or suspending an order or decision of the Division shall be made by any court of this State otherwise than on five (5) days' notice and, after a hearing, and if a stay or suspension is allowed the order granting the same shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage. (1945, c. 702, s. 26.)

§ **113-407. Stay bond.** — In case the order or decision of the Division is stayed or suspended, the order or judgment of the court shall not become effective until a bond shall have been executed and filed with and approved by the court, payable to the Division, sufficient in amount and security to secure the prompt payment, by the party petitioning for the stay, of all damages caused by the delay in the enforcement of the order or decision of the Division. (1945, c. 702, s. 27.)

§ **113-408. Enjoining violation of laws and regulations; service of process; application for drilling well to include residence address of applicant.**—Whenever it shall appear that any person is violating, or threatening to violate, any statute of this State with respect to the conservation of oil or gas, or both, or any provision of this law, or any rule, regulation or order made thereunder by any act done in the operation of any well producing oil or gas, or by omitting any act required to be done thereunder, the Division, through the Attorney General, may bring suit against such person in the superior court in the county in which the well in question is located, to restrain such person or persons from continuing such violation or from carrying out the threat of violation. In such suit the Division may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and temporary injunctions, as the facts may warrant, including, when appropriate, an injunction restraining any person from moving or disposing of illegal oil, illegal gas or illegal product, and any or all such commodities may be ordered to be impounded or placed under the control of an agent appointed by the court if, in the judgment of the court, such action is advisable.

If any such defendant cannot be personally served with summons in that county, personal jurisdiction of that defendant in such suit may be obtained by service made on any employee or agent of that defendant working on or about the oil or gas well involved in such suit, and by the Division mailing a copy of the complaint in the action to the defendant at the address of the defendant then recorded with the director of production and conservation.

Each application for the drilling of a well in search of oil or gas in this State shall include the address of the residence of the applicant or each applicant, which address shall be the address of each person involved in accordance with the records of the director of production and conservation, until such address is changed on the records of the Division after written request. (1945, c. 702, s. 28.)

§ **113-409. Punishment for making false entries, etc.** — Any person who, for the purpose of evading this law, or of evading any rule, regulation, or order made thereunder, shall intentionally make or cause to be made any false entry or statement of fact in any report required to be made by this law or by any rule, regulation, or order made hereunder; or who, for such purpose, shall make or cause to be made any false entry in any account, record, or memorandum kept by any person in connection with the provisions of this law or of any rule, regulation or order made thereunder; or who, for such purpose, shall omit to make, or cause to be omitted, full, true and correct entries in such accounts, records, or memoranda, of all facts and transactions pertaining to the interest or activities in the petroleum industry of such person as may be required by the Division under authority given in this law or by any rule, regulation, or order made hereunder; or who, for such purpose shall remove out of the jurisdiction of the State, or who shall mutilate, alter, or by any other means falsify, any book, record, or other paper, pertaining to the transactions regulated by this law, or by any rule, regulation, or order made hereunder, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of competent jurisdiction, to a fine of not more than five hundred dollars ($500.00), or imprisonment for a term of not more than six months, or both such fine and imprisonment. (1945, c. 702, s. 29.)

§ **113-410. Penalties for other violations.**—Any person who knowingly and willfully violates any provision of this law, or any rule, regulation, or order of the Division made hereunder, shall, in the event a penalty for such violation is not otherwise provided for herein, be subject to a penalty of not to exceed one thousand dollars ($1,000.00) a day for each and every day of such violation, and for each and every act of violation, such penalty to be recovered in a suit in the superior court of the county where the defendant resides, or in the county of the residence of any defendant if there be more than one defendant, or in the superior court of the county where the violation took place. The place of suit shall be selected by the Division, and such suit, by direction of the Division, shall be instituted and conducted in the name of the Division by the Attorney General. The payment of any penalty as provided for herein shall not have the effect of changing illegal oil into legal oil, illegal gas into legal gas, or illegal product into legal product, nor shall such payment have the effect of authorizing the sale or purchase or acquisition, or the transportation, refining, processing, or handling in any other way, of such illegal oil, illegal gas or illegal product, but, to the contrary, penalty shall be imposed for each prohibited transaction relating to such illegal oil, illegal gas or illegal product.

Any person knowingly and willfully aiding or abetting any other person in the violation of any statute of this State relating to the conservation of oil or gas, or the violation of any provision of this law, or any rule, regulation, or order made thereunder, shall be subject to the same penalties as prescribed herein for the violation by such other person. (1945, c. 702, s. 30.)

§ **113-411. Dealing in or handling of illegal oil, gas or product prohibited.**—(a) The sale, purchase or acquisition, or the transportation, refining, processing or handling in any other way of illegal oil, illegal gas or illegal product is hereby prohibited. All persons purchasing any petroleum product must first be licensed to do so by the Petroleum Division.

(b) Unless and until the Division provides for certificates of clearance or tenders, or some other method, so that any person may have an opportunity to determine whether any contemplated transaction of sale, purchase or acquisition, or transportation, refining, processing or handling in any other way, involves illegal oil, illegal gas or illegal product, no penalty shall be imposed for the sale, purchase or acquisition, or the transportation, refining, processing or handling in any other way of illegal oil, illegal gas or illegal product, except under circumstances hereinafter stated. Penalties shall be imposed for the commission of each transaction prohibited in this section when the person committing the same knows that illegal oil, illegal gas or illegal product is involved in such transaction, or when such person could have known or determined such fact by the exercise of reasonable diligence or from facts within his knowledge. However, regardless of lack of actual notice or knowledge, penalties as provided in this law shall apply to any sale, purchase or acquisition, and to the transportation, refining, processing or handling in any other way, of illegal oil, illegal gas or illegal product, where administrative provision is made for identifying the character of the commodity as to its legality. It shall likewise be a violation for which penalties shall be imposed for any person to sell, purchase or acquire, or to transport, refine, process or handle in any other way any oil, gas or any product without complying with any rule, regulation or order of the Division relating thereto. (1945, c. 702, s. 31.)

§ **113-412. Seizure and sale of contraband oil, gas and product.**—Apart from, and in addition to, any other remedy or procedure which may be available to the Division, or any penalty which may be sought against or imposed upon any person with respect to violations relating to illegal oil, illegal gas, or illegal product, all illegal oil, illegal gas and illegal product shall, except under such circumstances as are stated herein, be contraband and shall be seized and sold, and the proceeds applied as herein provided. Such sale shall not take place unless the court shall find, in the proceeding provided for in this paragraph, that the commodity involved is contraband. Whenever the Division believes that illegal oil, illegal gas or illegal product is subject to seizure and sale, as provided herein, it shall, through the Attorney General, have issued a warrant of attachment and bring a civil action in rem for that purpose in the superior court of the county where the commodity is found, or the action may be maintained in connection with any suit or cross bill for injunction or for penalty relating to any prohibited transaction involving such illegal oil, illegal gas or illegal product. Any interested person who may show himself to be adversely affected by any such seizure and sale shall have the right to intervene in such suit to protect his rights.

The action referred to above shall be strictly in rem and shall proceed in the name of the State as plaintiff against the illegal oil, illegal gas or illegal product mentioned in the complaint, as defendant, and no bond or bonds shall be required of the plaintiff in connection therewith. Upon the filing of the complaint, the clerk of the court shall issue a summons directed to the sheriff of the county, or to such other officer or person as the court may authorize to serve process, requiring him to summon any and all persons (without undertaking to name them) who may be interested in the illegal oil, illegal gas, or illegal product mentioned in the complaint to appear and answer within thirty days after the issuance and service of such summons. The summons shall contain the style and number of the suit and a very brief statement of the nature of the cause of action. It shall be served by posting one copy thereof at the courthouse door of the county where the commodity involved in the suit is alleged to be located and by posting another copy thereof near the place where the commodity is alleged to be located. Copy of such summons shall be posted at least five days before the return day stated therein, and the posting of such copy shall constitute constructive possession of such commodity by the State. A copy of the summons shall also be published once each week for four weeks in some newspaper published in the county where the suit is pending and having a bona fide circulation therein. No judgment shall be pronounced by any court condemning such commodity as contraband until after the lapse of five days from the last publication of said summons. Proof of service of said summons, and the manner thereof, shall be as provided by general law.

Where it appears by a verified pleading on the part of the plaintiff, or by affidavit, or affidavits, or by oral testimony, that grounds for the seizure and sale exist, the clerk, in addition to the summons or warning order, shall issue a warrant of attachment, which shall be signed by the clerk and bear the seal of the court. Such warrant of attachment shall specifically describe the illegal oil, illegal gas or illegal product, so that the same may be identified with reasonable certainty. It shall direct the sheriff to whom it is addressed to take into his custody, actual or constructive, the illegal oil, illegal gas or illegal product, described therein, and to hold the same subject to the orders of the court. Said warrant of attachment shall be executed as a writ of attachment is executed. No bond shall be required before the issuance of such warrant of attachment, and the sheriff shall be responsible upon his official bond for the proper execution thereof.

In a proper case, the court may direct the sheriff to deliver the custody of any illegal oil, illegal gas or illegal product seized by him under a warrant of attachment, to a commissioner to be appointed by the court, which commissioner shall act as the agent of the court and shall give bond with such approved surety as the court may direct, conditioned that he will faithfully conserve such illegal oil, illegal gas or illegal product, as may come into his custody and possession in accordance with the orders of the court; provided, that the court may in its discretion appoint any member of the Division or any agent of the Division as such commissioner of the court.

Sales of illegal oil, illegal gas or illegal product seized under the authority of this law, and notices of such sales, shall be in accordance with the laws of this State relating to the sale and disposition of attached property; provided, however, that where the property is in custody of a commissioner of the court, the sale shall be held by said commissioner and not by the sheriff. For his services hereunder, such commissioner shall receive a reasonable fee to be paid out of the proceeds of the sale or sales to be fixed by the court ordering such sale.

The court may order that the commodity be sold in specified lots or portions, and at specified intervals, instead of being sold at one time. Title to the amount sold shall pass as of the date of the law which is found by the court to make the commodity contraband. The judgment shall provide for payment of the proceeds of the sale into the general fund of the State Treasurer, after first deducting the costs in connection with the proceedings and the sale. The amount sold shall be treated as legal oil, legal gas or legal product, as the case may be, in the hands of the purchaser, but the purchaser and the commodity shall be subject to all applicable laws, and rules, regulations and orders with respect to further sale or purchase or acquisition, and with respect to the transportation, refining, processing, or handling in any other way, of the commodity purchased.

Nothing in this section shall deny or abridge any cause of action a royalty owner, or a lien holder, or any other claimant, may have, because of the forfeiture of the illegal oil, illegal gas, or illegal product, against the person whose act resulted in such forfeiture. No illegal oil, illegal gas or illegal product shall be sold for less than the average market value at the time of sale of similar products of like grade and character. (1945, c. 702, s. 32.)

§ **113-413. Funds for administration.**—If the Governor shall proclaim and declare this law to be in full force and effect prior to March first, one thousand nine hundred and forty-seven, the funds necessary for the administration of this law shall be provided by the Governor from the Contingency and Emergency Fund. (1945, c. 702, s. 33.)

§ **113-414. Filing list of renewed leases in office of register of deeds.**—On December thirty-first of each year, or within ten days thereafter, every person, firm or corporation holding petroleum leases shall file in the office of the register of deeds of the county within which the land covered by such leases is located, a list showing the leases which have been renewed for the ensuing year. (1945, c. 702, s. 34.)

SUBCHAPTER VI. WELL DRILLING.

Article 28.

Drillers Using Power Machinery.

§§ **113-415 to 113-419:** Repealed by Session Laws 1959, c. 779, s. 3.

Chapter 114.

Department of Justice.

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Attorney General.

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ARTICLE 1.

Attorney General.

§ **114-1. Creation of Department of Justice under supervision of Attorney General.**—There is hereby created a Department of Justice which shall be under the supervision and direction of the Attorney General, as authorized by article III, section eighteen, of the Constitution of North Carolina. (1939, c. 315, s. 1.)

Editor's Note. — For comment on this enactment, see 17 N.C.L. Rev. 375.

§ **114-2. Duties.**—It shall be the duty of the Attorney General:

(1) To defend all actions in the Supreme Court in which the State shall be interested, or is a party; and also when requested by the Governor or either branch of the General Assembly to appear for the State in any other court or tribunal in any cause or matter, civil or criminal, in which the State may be a party or interested.

(2) At the request of the Governor, Secretary of State, Treasurer, Auditor,

Utilities Commission, Commissioner of Banks, Insurance Commissioner or Superintendent of Public Instruction, he shall prosecute and defend all suits relating to matters connected with their departments.

(3) To represent all State institutions, including the State's prison, whenever requested so to do by the official head of any such institution.

(4) To consult with and advise the solicitors, when requested by them, in all matters pertaining to the duties of their office.

(5) To give, when required, his opinion upon all questions of law submitted to him by the General Assembly, or by either branch thereof, or by the Governor, Auditor, Treasurer, or any other State officer.

(6) To pay all moneys received for debts due or penalties to the State immediately after the receipt thereof into the treasury.

(7) To compare the warrants drawn by the Auditor on the State treasury with the laws under which they purport to be drawn. (1868-9, c. 270, s. 82; 1871-2, c. 112, s. 2; Code, s. 3363; 1893, c. 379; 1901, c. 744; Rev., s. 5380; C. S., s. 7694; 1931, c. 243, s. 5; 1933, c. 134, s. 8; 1941, c. 97.)

Cross References.—As to actions by the Attorney General, see § 1-515. As to duty to bring actions for failure of charitable trust to file account, see § 36-20. As to duty in prosecuting violations of laws governing monopolies and trusts, see § 75-13. As to investigating violations of certain local government acts and duties connected therewith, see §§ 159-40, 159-41.

Editor's Note.—The "Insurance Commissioner," referred to in subdivision (2), is now the "Commissioner of Insurance." See § 58-5.

Directives as to Legal Duties of Constitutional Officers. — The Attorney General has no constitutional authority to issue a directive to any other constitutional officer concerning his legal duties. State v. Loesch, 237 N.C. 611, 75 S.E.2d 645 (1953).

Opinions Advisory Only. — An opinion of the Attorney General, given in the performance of his statutory duty under subdivision (5), is advisory only. Lawrence v. Shaw, 210 N.C. 352, 186 S.E. 504 (1936).

The responsibility for interpreting a tax statute is placed on the Commissioner of Revenue by § 105-264, and the Attorney General's opinion in regard thereto is advisory only, by virtue of N.C. Const., Art. 3, § 14, and this section. In re Virginia-Carolina Chem. Corp., 248 N.C. 531, 103 S.E.2d 823 (1958).

Advisory Duty as to Solicitors. — The duty of the Attorney General as to the solicitors of the State is purely advisory. State v. Loesch, 237 N.C. 611, 75 S.E.2d 654 (1953).

Quoted in National Ass'n for Advancement of Colored People v. Eure, 245 N.C. 331, 95 S.E.2d 893 (1957).

§ 114-3. To devote whole time to duties.—The Attorney General shall devote his whole time to the duties of the office and shall not engage in the private practice of law. (1929, c. 1, s. 1.)

§ 114-4. Assistants; compensation; assignments.—The Attorney General shall be allowed to appoint five assistant attorneys general, and each of such assistant attorneys general shall receive a salary to be fixed by the Director of the Budget. Two assistant attorneys general shall be assigned to the State Department of Revenue. The other assistant attorneys general shall perform such duties as may be assigned by the Attorney General: Provided, however, the provisions of this section shall not be construed as preventing the Attorney General from assigning additional duties to the assistant attorneys general assigned to the State Department of Revenue. (1925, c. 207, s. 1; 1937, c. 357; 1945, c. 786; 1947, c. 182.)

§ 114-4.1. Assistant attorney general assigned to Department of Revenue and Department of Motor Vehicles.—The Attorney General is authorized to appoint an assistant attorney general, in addition to those now provided by law, to be assigned to the Department of Revenue and the Department of Motor Vehicles, and such assistant attorney general shall also perform such additional duties as may be assigned to him by the Attorney General, and shall otherwise be subject to all provisions of the statutes relating to assistant attorneys general. (1955, c. 56.)

§ **114-4.2. Assistant attorneys general and staff assigned to State Highway Commission and chairman.**—The Attorney General is authorized to appoint three assistant attorneys general, in addition to those now provided by law, to be assigned, together with an adequate number of staff attorneys, to the State Highway Commission and the chairman of the State Highway Commission, and such assistant attorneys general and staff attorneys shall also perform such additional duties as may be assigned to them by the Attorney General, and shall otherwise be subject to all provisions of the statutes relating to assistant attorneys general and staff members. There shall be appropriated to the State Highway Commission or Department from the State Highway Fund such sum as may be necessary to pay the salaries of said assistant attorneys general, other members of the legal staff herein provided for, and necessary secretaries. The State Highway Commission shall provide adequate office equipment and supplies. (1957, c. 65, s. 9; 1965, c. 55, s. 16; c. 408, s. 1.)

Editor's Note. — The first 1965 amendment substituted "chairman of the State Highway Commission" for "Director of Highways" in the first sentence.

The second 1965 amendment substituted "three assistant attorneys general" for "an assistant attorney general" near the beginning of the section and substituted "assistant attorneys general" for "assistant attorney general" at two other places in the section. The amendatory act also provides that it is not its intent and purpose to add more personnel to the Attorney General's staff, but rather to authorize three existing positions to have the status of assistant attorney general.

§ **114-4.3. Additional assistant attorneys general.** — The Attorney General is authorized to appoint two assistant attorneys general in addition to those now provided by law, who shall be subject to the general provisions of the statutes relating to assistant attorneys general. (1959, c. 1265; 1965, c. 408, s. 1.)

Editor's Note. — The 1965 amendment substituted "two assistant attorneys general" for "an assistant attorney general." The amendatory act also provides that it is not its intent and purpose to add more personnel to the Attorney General's staff, but rather to authorize three existing positions to have the status of assistant attorney general.

§ **114-4.4. Deputy attorneys general.**—The Attorney General is hereby authorized to designate from among the assistant attorneys general authorized by this article not more than four (4) of such assistants as deputy attorneys general to perform such duties and undertake such responsibilities as the Attorney General may direct. (1963, c. 355.)

§ **114-5. Additional clerical help.** — The Attorney General shall be allowed such additional clerical help as shall be necessary; the amount of such help and the salary therefor shall be fixed by the Budget Bureau and the Attorney General. (1925, c. 207, s. 2.)

§ **114-6. Duties of Attorney General as to civil litigation.**—The Attorney General shall continue to perform all duties now required of his office by law and to exercise the duties now prescribed by law as to civil litigation affecting the State, or any agency or department thereof, and shall assign to the members of the staff all duties to be performed in connection with criminal prosecutions and civil litigation authorized by this article or by existing laws. (1939, c. 315, ss. 7, 8.)

Quoted in National Ass'n for Advancement of Colored People v. Eure, 245 N.C. 331, 95 S.E.2d 893 (1957).

§ **114-7. Salary of Attorney General.** — The Attorney General shall receive an annual salary of eighteen thousand dollars ($18,000.00), payable monthly. (1929, c. 1, s. 2; 1947, c. 1043; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 3.)

Editor's Note.—The 1963 amendment increased the salary from $13,500 to $18,000.

§ **114-8. Fees of Attorney General.**—In all appeals to the Supreme Court of persons convicted of criminal offenses, a fee of ten dollars against each person who shall not reverse the judgment shall be allowed the Attorney General, to be taxed among the costs of that court. The Attorney General shall pay these fees into the State treasury. (1873-4, c. 170; Code, s. 3737; Rev., s. 2747; 1907, c. 994, s. 1; C. S., s. 3871.)

Article 2.

Division of Legislative Drafting and Codification of Statutes.

§ **114-9. Creation of Division; powers and duties.** — The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Legislative Drafting and Codification of Statutes. There shall be assigned to this Division by the Attorney General duties as follows:

(1) To prepare bills to be presented to the General Assembly at the request of the Governor, and the officials of the State and departments thereof, and members of the General Assembly, and to advise with said officials in connection therewith, and to advise with and assist counties, cities, and towns in the drafting of legislation to be submitted to the General Assembly.

(2) To supervise the recodification of all the statute law of North Carolina and supervise the keeping of such recodifications current by including therein all laws hereafter enacted by supplements thereto issued periodically, all of which recodifications and supplements shall be appropriately annotated.

(3) In order that the laws of North Carolina, as set out in the General Statutes of North Carolina, may be made and kept as simple, as clear, as concise and as complete as possible, and in order that the amount of construction and interpretation of the statutes required of the courts may be reduced to a minimum, it shall also be the duty of the Division of Legislative Drafting and Codification of Statutes to establish and maintain a system of continuous statute research and correction. To that end the Division shall:

a. Make a systematic study of the general statutes of the State, as set out in the General Statutes and as hereafter enacted by the General Assembly, for the purpose of ascertaining what ambiguities, conflicts, duplications and other imperfections of form and expression exist therein and how these defects may be corrected.

b. Consider such suggestions as may be submitted to the Division with respect to the existence of such defects and the proper correction thereof.

c. Prepare for submission to the General Assembly from time to time bills to correct such defects in the statutes as its research discloses. (1939, c. 315, s. 5; 1941, c. 35; 1943, c. 382.)

Editor's Note.—For note on responsibilities of Division, see 17 N.C.L. Rev. 376.

For article on recodification of statutes, see 19 N.C.L. Rev. 25.

§ **114-9.1. Revisor of Statutes.**—The member of the staff of the Attorney General who is assigned to perform the duties prescribed by § 114-9 (3) shall be known as the Revisor of Statutes and shall receive a salary to be fixed by the Governor subject to the approval of the Advisory Budget Commission. (1947, c. 114, s. 1; 1957, c. 541, s. 10.)

Editor's Note. — For comment on this section, see 25 N.C.L. Rev. 459.

ARTICLE 3.

Division of Criminal Statistics.

§ **114-10. Division of Criminal Statistics.** — The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Criminal Statistics. There shall be assigned to this Division by the Attorney General duties as follows:

(1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.

(2) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.

(3) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.

(4) To perform such other duties as may be from time to time prescribed by the Attorney General. (1939, c. 315, s. 2; 1955, c. 1257, ss. 1, 2.)

§ **114-11. Courts and officials thereof to furnish statistical data.**— All courts, officers and officials thereof, shall furnish all statistical data with respect to such courts as is hereinbefore mentioned, such information to be furnished on forms provided by the Attorney General, and to be furnished at such time or times as may be required by the Attorney General. Any clerk or officer of any court in the State of North Carolina who shall wilfully fail or refuse to furnish such statistical data, after demand therefor has been made by the Attorney General, shall be subject to be amerced, upon motion of the Attorney General, in the sum of two hundred dollars ($200.00) in the superior court of the county in which such officer resides. (1939, c. 315, s. 4.)

§ **114-11.1:** Repealed by Session Laws 1965, c. 310, s. 4.

ARTICLE 4.

State Bureau of Investigation.

§ **114-12. Bureau of Investigation created; powers and duties.**—In order to secure a more effective administration of the criminal laws of the State, to prevent crime, and to procure the speedy apprehension of criminals, the Attorney General shall set up in the Department of Justice a division to be designated as the State Bureau of Investigation. The Division shall have charge of and administer the agencies and activities herein set up for the identification of criminals, for their apprehension, for the scientific analysis of evidence of crime, and investigation and preparation of evidence to be used in criminal courts; and the said Bureau shall have charge of investigation of criminal matters herein especially mentioned, and of such other crimes and criminal procedure as the Governor may direct. (1937, c. 349, s. 1; 1939, c. 315, s. 6.)

§ **114-13. Director of the Bureau; personnel.**—The Attorney General shall appoint a Director of the Bureau of Investigation, who shall serve at the will of the Attorney General, and whose salary shall be fixed by the Budget Bureau under § 143-36 et seq. He may further appoint a sufficient number of assistants and stenographic and clerical help, who shall be competent and qualified to do the work of the Bureau. The salaries of such assistants shall be fixed by the Budget Bureau under § 143-36 et seq. The salaries of clerical and stenographic help shall be the same as now provided for similar employees in other State departments and bureaus.

All the benefits, duties, authority and requirements of subsections (b), (c), (d), and (e) of § 20-185 applicable to members and officers of the State Highway Patrol, shall be applicable to officers and special agents of the State Bureau of Investigation whose salaries are fixed as provided by law, and wherever in said subsections any duty, responsibility or authority is vested in the Commanding Officer of the State Highway Patrol or the Commissioner of Motor Vehicles, such duty, responsibility, or authority is hereby vested in the Director of the State Bureau of Investigation. Wherever in said subsection any benefits, duties, authority, or requirements are vested in, placed on, or extended to officers and members of the State Highway Patrol, such benefits, duties, authority and requirements are vested in, placed on, and extended to officers and special agents of the State Bureau of Investigation. (1937, c. 349, s. 4; 1939, c. 315, s. 6; 1955, c. 1185, s. 1.)

§ **114-14. General powers and duties of Director and assistants.**—The Director of the Bureau and his assistants are given the same power of arrest as is now vested in the sheriffs of the several counties, and their jurisdiction shall be state-wide. The Director of the Bureau and his assistants shall, at the request of the Governor, give assistance to sheriffs, police officers, solicitors, and judges when called upon by them and so directed. They shall also give assistance, when requested, to the office of the Commissioner of Paroles in the investigation of cases pending before the parole office and of complaints lodged against parolees, when so directed by the Governor. (1937, c. 349, s. 5.)

§ **114-14.1. Transfer of personnel.**—The Director of the State Bureau of Investigation shall have authority to transfer members of the Bureau from one locality in the State to another as he may deem necessary. When any member of the State Bureau of Investigation is transferred from one point to another for the convenience of the State, or otherwise than upon the request of the employee, the Bureau shall be responsible for transporting the household goods, furniture, and personal effects of the employee and members of his household. (1955, c. 1185, s. 2.)

§ **114-15. Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants.** — The Bureau shall, through its Director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the State; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so directed by the Governor. Such investigation, however, shall in nowise interfere with the power of the Attorney General to make such investigation as he is authorized to make under the laws of the State. The Bureau is authorized further, at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the State, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the Governor so to do. In all such cases it shall be the duty of the Department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the Director of the Bureau, and of his assistants, may be required by the Governor in connection with the investigation of any crime committed anywhere in the State when called upon by the enforcement officers of the State, and when, in the judgment of the Governor, such services may be rendered with advantage to the enforcement of the criminal law. The State Bureau of Investigation is hereby authorized to investigate without request the attempted arson, or arson, damage of, theft from, or theft of, or misuse of, any state-owned personal property, buildings, or other real property.

All records and evidence collected and compiled by the Director of the Bureau and his assistants shall not be considered public records within the meaning of § 132-1, and following, of the General Statutes of North Carolina and may be made available to the public only upon an order of a court of competent jurisdiction. Provided that all records and evidence collected and compiled by the Director of the Bureau and his assistants shall, upon request, be made available to the solicitor of any district if the same concerns persons or investigations in his district.

In all cases where the cost is assessed against the defendant and paid by him, there shall be assessed in the bill of cost, mileage and witness fees to the Director and any of his assistants who are witnesses in cases arising in courts of this State. The fees so assessed, charged and collected shall be forwarded by the clerks of the court to the Treasurer of the State of North Carolina, and there credited to the Bureau of Identification and Investigation Fund. (1937, c. 349, s. 6; 1947, c. 280; 1965, c. 772.)

Editor's Note. — The 1965 amendment added the last sentence in the first paragraph.

For comment on the 1947 amendment, see 25 N.C.L. Rev. 403.

Right to Court Order Permitting Inspection of Records and Evidence. — This section gives to a defendant in a criminal action no unqualified right to have a court of competent jurisdiction enter an order permitting him an inspection of "all records and evidence collected and compiled" by the State Bureau of Investigation in a criminal case pending against him. State v. Goldberg, 261 N.C. 181, 134 S.E.2d 334 (1964).

§ 114-16. Laboratory and clinical facilities; employment of criminologists; services of scientists, etc., employed by State; radio system. —In the said Bureau there shall be provided laboratory facilities for the analysis of evidences of crime, including the determination of presence, quantity and character of poisons, the character of bloodstains, microscopic and other examination material associated with the commission of crime, examination and analysis of projectiles of ballistic imprints and records which might lead to the determination or identification of criminals, the examination and identification of fingerprints, and other evidence leading to the identification, apprehension, or conviction of criminals. A sufficient number of persons skilled in such matters shall be employed to render a reasonable service to the prosecuting officers of the State in the discharge of their duties. In the personnel of the Bureau shall be included a sufficient number of persons of training and skill in the investigation of crime and in the preparation of evidence as to be of service to local enforcement officers, under the direction of the Governor, in criminal matters of major importance.

The laboratory and clinical facilities of the institutions of the State, both educational and departmental, shall be made available to the Bureau, and scientists and doctors now working for the State through its institutions and departments may be called upon by the Governor to aid the Bureau in the evaluation, preparation, and preservation of evidence in which scientific methods are employed, and a reasonable fee may be allowed by the Governor for such service.

The State radio system shall be made available to the Bureau for use in its work. (1937, c. 349, s. 7.)

§ **114-17. Cooperation of local enforcement officers.**—All local enforcement officers are hereby required to cooperate with the said Bureau, its officers and agents, as far as may be possible, in aid of such investigations and arrest and apprehension of criminals as the outcome thereof. (1937, c. 349, s. 8.)

§ **114-18. Governor authorized to transfer activities of Central Prison Identification Bureau to the new Bureau; photographing and fingerprinting records.**—The records and equipment of the Identification Bureau now established at Central Prison shall be made available to the said Bureau of Investigation, and the activities of the Identification Bureau now established at Central Prison may, in the future, if the Governor deem advisable, be carried on by the Bureau hereby established; except that the Bureau established by this article shall have authority to make rules and regulations whereby the photographing and fingerprinting of persons confined in the Central Prison, or clearing through the Central Prison, or sentenced by any of the courts of this State to service upon the roads, may be taken and filed with the Bureau. (1937, c. 349, s. 2; 1939, c. 315, s. 6.)

Editor's Note.—By Session Laws 1953, c. 55, the name of the Bureau of Identification having its principal offices at the State prison was changed to "Consolidated Records Section — Prison Department." See §§ 148-74 to 148-81.

§ **114-19. Taking fingerprints and photographs of suspects and convicts; criminal statistics.**—Every chief of police and sheriff in the State of North Carolina is hereby authorized to take, or cause to be taken, the fingerprints and photographs of any person charged with the commission of a felony and of any person who has been committed to jail or prison upon conviction of a crime. No officer shall take the photograph of a person arrested and charged with a misdemeanor, unless such person is a fugitive from justice or unless such person shall, at the time of arrest, have in his possession property or goods reasonably believed by such officer to have been stolen, or unless the officer has reasonable grounds to believe that such person is wanted by the Federal Bureau of Investigation, the State Bureau of Investigation or some other law enforcement officer or agent.

Any fingerprints or photographs taken pursuant to this section may be forwarded by the chief of police or sheriff to the Director of the State Bureau of Investigation.

It shall be the duty of the State Bureau of Investigation to receive and collect police information, to assist in locating, identifying, and keeping records of criminals in this State, and from other states, and to compare, classify, compile, publish, make available and disseminate any and all such information to the sheriffs, constables, police authorities, courts or any other officials of the State requiring such criminal identification, crime statistics and other information respecting crimes local and national, and to conduct surveys and studies for the purpose of determining so far as is possible the source of any criminal conspiracy, crime wave, movement or cooperative action on the part of the criminals, reporting such conditions, and to cooperate with all officials in detecting and preventing. (1965, c. 1049, s. 1.)

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Elementary and Secondary Education.

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SUBCHAPTER I. GENERAL PROVISIONS.

Article 1.

State Plan for Public Education.

§ 115-1. General and uniform system of schools.—A general and uniform system of public schools shall be provided throughout the State, in accordance with the provisions of Article IX of the Constitution of North Carolina, wherein tuition shall be free of charge to all children of the State between the ages of six and twenty-one years, and to every person twenty-one years of age, or over, who has not completed a standard high school course of study. The minimum six months school term required by Article IX of the Constitution is hereby extended to embrace a total of one hundred and eighty days of school in order that there shall be operated in every county and city administrative unit a uniform school term of nine months without the levy of a State ad valorem tax therefor, and in order that substantial equality of educational opportunity may be available to all children of the State. (1955, c. 1372, art. 1, s. 1; 1963, c. 448, s. 24.)

Cross Reference. — As to age requirement and time of enrollment, see § 115-162.

Editor's Note. — Chapter 1372 of the 1955 Session Laws rewrote all the provisions of this chapter of the General Statutes as contained in Recompiled Volume 3A and the 1953 Supplement thereto, after deleting certain obsolete sections. A number of other 1955 acts relate to this chapter and have been incorporated herein. These acts are chapters 366, 664, 817, 1231, 1256, 1292, 1335 and 1374. Chapter 1372 provides that it shall not be construed to repeal any local or special acts relating to the public schools.

The title of this chapter was changed from "Education" to "Elementary and Secondary Education" by Session Laws 1963, c. 448, s. 31. The 1963 amendment deleted the words "or who desires to study the vocational subjects taught in such school" following the word "study" at the end of the first sentence.

Cited in State ex rel. East Lenoir Sanitary Dist. v. City of Lenoir, 249 N.C. 96, 105 S.E.2d 411 (1958); Fremont City Bd. of Educ. v. Wayne County Bd. of Educ., 259 N.C. 280, 130 S.E.2d 408 (1963).

§ 115-2. Administration of system vested in State Board of Education.—The general supervision and administration of the free public school system shall be vested in the State Board of Education, to consist of the Lieutenant Governor, the State Treasurer, the State Superintendent of Public Instruction, and ten (10) members to be appointed by the Governor, subject to confirmation by the General Assembly in joint session. Of the appointive members of the

State Board of Education, one shall be appointed from each of the eight educational districts, and two shall be appointed as members at large. All appointive members of the State Board of Education shall serve for a term of eight years and in four classes, as provided in the Constitution. Any appointments to fill vacancies shall be made by the Governor for the unexpired term, which appointments shall not be subject to confirmation. The Governor shall transmit to the presiding officers of the Senate and House of Representatives, on or before the 60th legislative day of the General Assembly the names of the persons appointed by him and submitted to the General Assembly for confirmation; and thereafter, pursuant to joint resolution, the Senate and House of Representatives shall meet in joint session for consideration of an action upon such appointments.

The provisions of this article shall not affect the terms of office of the members of the State Board of Education as now constituted.

The State Superintendent of Public Instruction shall be the administrative head of the public school system and shall be the secretary of the Board. (1955, c. 1372, art. 1, s. 2.)

Cited in Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958).

§ **115-3. Educational districts.**—The State of North Carolina shall be divided into eight educational districts embracing the counties herein set forth:

First District

Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Pitt, Tyrrell, Washington.

Second District

Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Sampson, Wayne.

Third District

Durham, Edgecombe, Franklin, Granville, Halifax, Johnston, Nash, Northampton, Vance, Wake, Warren, Wilson.

Fourth District

Bladen, Columbus, Cumberland, Harnett, Hoke, Lee, Montgomery, Moore, Richmond, Robeson, Scotland.

Fifth District

Alamance, Caswell, Chatham, Davidson, Forsyth, Guilford, Orange, Person, Randolph, Rockingham, Stokes.

Sixth District

Anson, Cabarrus, Cleveland, Gaston, Lincoln, Mecklenburg, Stanly, Union.

Seventh District

Alexander, Alleghany, Ashe, Avery, Burke, Caldwell, Catawba, Davie, Iredell, Rowan, Surry, Watauga, Wilkes, Yadkin.

Eighth District

Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Yancey. (1955, c. 1372, art. 1, s. 3.)

§ **115-4. Administrative units classified.**—Each county of the State shall be classified as a county administrative unit, the schools of which, except in city administrative units, shall be under the general supervision and control of a county board of education with a county superintendent as the administrative officer.

A city administrative unit shall be classified as an area within a county or adjacent parts of two or more contiguous counties which has been or may be approved by the State Board of Education as such a unit for purposes of school administration. The general administration and supervision of a city administrative unit shall be under the control of a board of education with a city superintendent as the administrative officer.

All administrative units, whether city or county, shall be dealt with by the State school authorities in all matters of school administration in the same way. (1955, c. 1372, art. 1, s. 4.)

Cross Reference.—See note to § 115-126.

Suit against Administrative School Unit.—A city administrative school unit may be sued only when and as authorized by statute. Smith v. Hefner, 235 N.C. 1, 68 S.E.2d 783 (1952).

An administrative school unit may not be held liable for torts committed by its trustees or employees. Smith v. Hefner, 235 N.C. 1, 68 S.E.2d 783 (1952).

Cited in Fremont City Bd. of Educ. v. Wayne County Bd. of Educ., 259 N.C. 280, 130 S.E.2d 408 (1963).

§ **115-5. School system defined.** — The school system of each county and city administrative unit shall consist of twelve years of study or grades, and shall be graded on the basis of a school year of not less than nine months. The system may be organized in one or two ways as follows: The first eight grades shall be styled the elementary school and the remaining four grades, the high school; or if more practicable, a junior high school may be formed by combining the first year of high school with both the seventh and eighth grades or with the eighth grade alone, and a senior high school which shall comprise the last three years of high school work. For purposes of Title V of the National Defense Education Act of 1958 (Public Law 85-864) the term "secondary school" shall be applicable to grades seven through twelve. (1955, c. 1372, art. 1, s. 5; 1959, c. 573, s. 1.)

§ **115-6. Schools classified and defined.**—The different types of public schools are classified and defined as follows:

(1) An elementary school, that is, a school which embraces a part or all of the eight elementary grades.

(2) A high school, that is, a school which embraces a high school department above the elementary grades and which offers at least the minimum high school course of study prescribed by the State Board of Education.

(3) A union school, that is, a school which embraces both elementary and high school grades.

(4) A junior high school, that is, a school which embraces not more than the first year of high school with not more than the upper two elementary grades.

(5) A senior high school, that is, a school which embraces the tenth, eleventh and twelfth grades. (1955, c. 1372, art. 1, s. 6; 1959, c. 915, s. 1; 1963, c. 448, s. 24.)

Editor's Note. — The 1963 amendment struck out former subdivision (6), relating to vocational schools.

§ **115-7. Term "district" defined.**—The term "district" here used is defined to mean any convenient territorial division or subdivision of a county, created for the purpose of maintaining within its boundaries one or more public schools. It may include one or more incorporated towns or cities, or parts thereof, or one or more townships, or parts thereof, all of which territory is included in a common boundary. There shall be three different kinds of districts:

(1) The nontax district, that is, a territorial division of a county administrative unit under the control of the county board of education, or a city administrative unit under the control of a city board of education, but

having no special local tax fund voted by the people for supplementing State and county funds.

(2) The local tax district, that is, a territorial division of a county administrative unit under the control of the county board of education, or a city administrative unit under the control of a city board of education but having in addition to State and county funds, a special local tax fund voted by the people for supplementing State and county funds.

(3) The administrative district, that is, a territorial division of a county administrative unit under the control of a county board of education which is established for administrative purposes and which consists of one or more local tax districts and/or nontax areas or bond districts of the county administrative unit. (1955, c. 1372, art. 1, s. 7; 1965, c. 584, s. 1.)

Editor's Note. — The 1965 amendment substituted "three" for "two" in the third sentence and added subdivision (3).

Equivalent of Township. — See Brown v. Candler, 236 N.C. 576, 73 S.E.2d 550 (1952).

§ **115-8. Officials defined.**—The governing board of a county administrative unit is "the .... county board of education." The governing board of a city administrative unit is "the .... city board of education." The governing board of the school district is "the .... district committee." The executive officer of either a county or city administrative unit shall be called "superintendent." The executive head of a school shall be called "principal." (1955, c. 1372, art. 1, s. 8; 1965, c. 584, s. 2.)

Editor's Note. — The 1965 amendment deleted "district or" preceding "school" in the last sentence.

This section sets up two coordinate classes of local administrative units: (1) County units, and (2) city administrative units. State Highway Comm'n v. Greensboro City Bd. of Educ., 265 N.C. 35, 143 S.E.2d 87 (1965).

Cited in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

§ **115-9. Tax levying authorities defined.**—As used in this chapter, the term "tax levying authorities" shall mean the board of county commissioners in all cases except where the boundaries of a city administrative unit shall be coterminous with or situate wholly within the boundaries of an incorporated city or town, in which case the term "tax levying authorities" shall mean the governing body of such city or town; provided, the municipal governing body may, by appropriate resolution, transfer this authority to the board of county commissioners with the approval of the board of county commissioners. (1955, c. 1372, art. 1, s. 9.)

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION.

Article 2.

The State Board of Education.

§ **115-10. Organization of Board.**—(a) Presiding Officer.—The State Board of Education shall elect from its membership a chairman and vice-chairman. A majority of the Board shall constitute a quorum for the transaction of business. Per diem and expenses of the appointive members of the Board shall be provided by the General Assembly. The chairman of the Board shall preside at all meetings of the Board. In the absence of the chairman, the vice-chairman shall preside; in the absence of both the chairman and the vice-chairman, the Board shall name one of its own members as chairman pro tempore.

(b) Regular Meetings of Board.—The regular meetings of the Board shall be held each month on a day certain, as determined by the Board. The Board shall determine the hour of the meeting, which may be adjourned from day to day, or to a day certain, until the business before the Board has been completed.

(c) Special Meetings.—Special meetings of the Board may be set at any regular meeting or may be called by the chairman or by the secretary upon the approval of the chairman; provided, a special meeting shall be called by the chairman upon the request of any five members of the Board. In case of regular meetings and special meetings, the secretary shall give notice to each member, in writing, of the time and purpose of the meeting, by letter directed to each member at his home post-office address. Such notice must be deposited in the Raleigh Post Office at least three days prior to the date of meeting.

(d) Voting.—No voting by proxy shall be permitted. Except in voting on textbook adoptions, all voting shall be viva voce unless a record vote or secret ballot is demanded by any member, and a majority of those present and voting shall be necessary to carry a motion. The secretary as a Board member is entitled to vote on all matters before the Board.

(e) Voting on Adoption of Textbooks.—A majority vote of the whole membership of the Board shall be required to adopt textbooks, and a roll call vote shall be had on each motion for such adoption or adoptions. A record of all such votes shall be kept in the minute book.

(f) Committees.—The Board may create from its membership such committees as it deems necessary to facilitate its business. The chairman of the Board shall appoint members to the several committees, and the secretary shall be an ex officio member of each committee so created and named.

(g) Record of Proceedings.—All the proceedings of the Board shall be recorded in a well-bound and suitable book, which shall be kept in the office of the Superintendent of Public Instruction, and open to public inspection. (1955, c. 1372, art. 2, s. 1; 1959, c. 573, s. 19.)

§ **115-11. Powers and duties generally.**—The powers and duties of the State Board of Education are defined as follows:

(1) General Supervision and Administration.—The Board shall have general supervision and administration of the educational funds provided by the State and federal governments, except those mentioned in § 5 of Article IX of the State Constitution, and also excepting such local funds as may be provided by a county, city, or district.

(2) Successors to Powers of President of Literary Fund and to Boards or Commissions.—The Board shall succeed to all the powers and trusts of the president and directors of the Literary Fund of North Carolina; and to all the powers, functions, duties, and property of all abolished commissions and boards including the State School Commission, the State Textbook Commission, the State Board for Vocational Education, and the State Board of Commercial Education, including the power to take, hold and convey property, both real and personal, to the same extent that any corporation might take, hold and convey the same under the laws of this State.

(3) Power to Divide the Administrative Units into Districts.—The Board shall have power to create in any county administrative units a convenient number of school districts, upon the recommendation of the county board of education. Such a school district may be entirely in one county or may consist of contiguous parts of two or more counties. The Board may modify the district organization in any administrative unit when it is deemed necessary for the economical and efficient administration and operation of the State school system, when requested to do so by the appropriate county or city board of education.

(4) Divisions of Functions of Board.—The Board shall divide its duties into two separate functions, insofar as may be practicable, as follows:

a. All those matters relating to the supervision and administration of the public school system, except the supervision and management of the fiscal affairs of the Board, shall be under the direction of the State Superintendent in his capacity as the constitutional administrative head of the public school system.

b. All those matters relating to the supervision and administration of the fiscal affairs of the public school fund committed to the administration of the State Board of Education shall be under the supervision and management of the controller.

(5) Appointment of Controller.—The Board shall appoint a controller, subject to the approval of the Governor, who shall serve at the will of the Board and who, under the direction of the Board, shall have supervision and management of the fiscal affairs of the Board. The salary of the controller shall be fixed by the Governor subject to the approval of the Advisory Budget Commission and shall be paid from Board appropriations.

(6) Apportionment of Funds.—The Board shall have authority to apportion and equalize over the State all State school funds and all federal funds granted to the State for assistance to educational programs administered within or sponsored by the public school system of the State.

(7) Investments.—The Board is authorized to direct the State Treasurer to invest in interest bearing securities any funds which may come into its possession, and which it deems expedient to invest, as other funds of the State are now or may be hereafter invested.

(8) Acceptance of Federal Funds and Aid.—The Board is authorized to accept, receive, use or reallocate to local school units any federal funds, or aids, that may be appropriated now or hereafter by the federal government for the encouragement and improvement of any phase of the free public school program which, in the judgment of the Board, will be beneficial to the operation of the schools. However, the Board is not authorized to accept any such funds upon any condition that the public schools of this State shall be operated contrary to any provisions of the Constitution or statutes of this State.

(9) Power to Purchase at Mortgage Sales; Payment of Drainage Assessments.—The State Board of Education is authorized to purchase at public sale any land or lands upon which it has a mortgage or deed of trust securing the purchase price, or any part thereof, and when any land so sold and purchased by the said Board of Education is a part of a drainage district theretofore constituted, upon which said land assessments have been levied for the maintenance thereof, such assessments shall be paid by the said State Board of Education, as if said land had been purchased or owned by an individual.

(10) Power to Adjust Debts for Purchase Price of Lands Sold; Sale of Mortgages, etc.—The State Board of Education is hereby authorized and empowered to settle, compromise or otherwise adjust any indebtedness due it upon the purchase price of any land or property sold by it, or to cancel and surrender the notes, mortgages, trust deeds, or other evidence of indebtedness without payment, when, in the discretion of said Board, it appears that it is proper to do so. The Board of Education is further authorized and empowered to sell or otherwise dispose of any such notes, mortgages, trust deeds, or other evidence of indebtedness.

(11) Power to Establish City Administrative Units.—The Board shall have power, in its discretion, to alter the boundaries of any city administrative unit, to establish additional city administrative units when, in its opinion, such change is desirable for better educational advantages

or better school administration: Provided, that such change in administration shall not have the effect of abolishing any special taxes that may have been voted in such unit.

(12) Power to Allot Special Teaching Personnel and Funds for Clerical Assistants to Principals.—The Board shall have power to provide for the enrichment and strengthening of educational opportunities for the children of the State, and when sufficient State funds are available to provide first for the allotment of such a number of teachers as to prevent the teacher load from being too great in any school, the Board is authorized, in its discretion, to make an additional allotment of teaching personnel to county and city administrative units of the State to be used either jointly or separately, as the Board may prescribe. Such additional teaching personnel may be used in the administrative units as librarians, special teachers, or supervisors of instruction and for other special instructional services such as art, music, physical education, adult education, special education, or industrial arts as may be authorized and approved by the Board. The salary of all such personnel shall be determined in accordance with the State salary schedule adopted by the Board.

In addition, the Board is authorized and empowered in its discretion, to make allotments of funds for clerical assistants for classified principals and for attendance counselors.

The Board is further authorized, in its discretion, to allot teaching personnel to county and city administrative units for experimental programs and purposes.

(13) Power to Make Provisions for Sick Leave.—The Board is authorized and empowered, in its discretion, to make provision for sick leave with pay for any teacher or principal not to exceed five days per school term and promulgate rules and regulations providing for necessary substitutes on account of said sick leave. The pay for a substitute shall be fixed by the Board. The Board may provide to each administrative unit not exceeding one percent (1%) of the cost of instructional services for the purpose of providing substitute teachers for those on sick leave as authorized by law or by regulations of the Board, but not exceeding the provisions made for other State employees.

(14) Miscellaneous Powers and Duties.—All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:

a. To certify and regulate the grade and salary of teachers and other school employees.

b. To adopt and supply textbooks.

c. To adopt a standard course of study upon recommendation of the State Superintendent of Public Instruction.

d. To formulate rules and regulations for the enforcement of the compulsory attendance law.

e. Repealed by Session Laws 1963, c. 448, s. 27.

f. To report to the General Assembly on the operation of the State Literary Fund.

g. To manage and operate a system of insurance for public school property.

(15) Acceptance of Gifts and Grants.—The Board is authorized to accept, receive, use, or reallocate to local school units any gifts, donations, grants, bequests, or other forms of voluntary contributions.

(16) Power to Provide for Programs or Projects in the Cultural and Fine Arts Areas.—The Board is authorized and empowered, in its discre-

tion, to make provisions for special programs or projects of a cultural and fine arts nature for the enrichment and strengthening of educational opportunities for the children of the State.

For this purpose, the Board may use funds received from gifts or grants and, with the approval of the Director of the Budget, may use State funds which the Board may find available in any budget administered by the Board.

(17) Power to Provide Library Resources, Textbooks and Other Instructional Materials to Private Schools.—The State Board of Education or any other State agency designated by the Governor shall have the power and authority to provide library resources, textbooks, and other instructional materials purchased from federal funds appropriated for the funding of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362, effective April 11, 1965) or other acts of Congress for the use of children and teachers in private elementary and secondary schools in the State as required by acts of Congress and rules and regulations promulgated thereunder. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2.)

Editor's Note.—The first 1963 amendment substituted "educational programs administered within or sponsored by the public school system of the State" for "local school units" at the end of subdivision (6). In subdivision (14) the amendment repealed former subparagraph e, relating to licensing of educational institutions and conferring of degrees, deleted former subparagraph g, relating to schools for adult education, and relettered former subparagraph h as g.

The second 1963 amendment added the third paragraph of subdivision (12) and also subdivisions (15) and (16).

The third 1963 amendment changed the last word in the second paragraph of subdivision (12) from "officers" to "counselors."

The 1965 amendment added subdivision (17).

Cited in Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958).

ARTICLE 3.

State Superintendent of Public Instruction.

§ 115-12. Administrative head of public school system.—The State Superintendent of Public Instruction, as administrative head of the public school system, shall perform the duties prescribed by law and he shall be secretary of the State Board of Education. (1955, c. 1372, art. 3, s. 1.)

Cited in Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958).

§ 115-13. Office and salary.—The Superintendent shall keep his office in the Education Building in Raleigh, and his salary shall be ten thousand dollars ($10,000.00) a year, payable monthly.

From and after the time the State Superintendent of Public Instruction shall take the oath of office and begin serving the term for which he is to be elected in 1956, he shall receive an annual salary of eighteen thousand dollars ($18,000.00): Provided, that said salary shall be paid out of the Contingency and Emergency Fund if funds for same are not available in the general fund for the biennium ending June 30, 1957. (1955, c. 1372, art. 3, s. 2; c. 1374; 1963, c. 1178, s. 2.)

Editor's Note. — The 1963 amendment increased the salary from $13,500.00 to $18,000.00.

§ 115-14. Administrative duties.—It shall be the duty of the State Superintendent of Public Instruction:

(1) To organize and establish a Department of Public Instruction which shall

include such divisions and departments as are necessary for supervision and administration of the public school system.

(2) To keep the public informed as to the problems and needs of the public schools by constant contact with all school administrators and teachers, by his personal appearance at public gatherings, and by information furnished to the press of the State.

(3) To report biennially to the Governor thirty days prior to each regular session of the General Assembly, such report to include information and statistics of the public schools, with recommendations for their improvement and for such changes in the school law as shall occur to him.

(4) To have printed and distributed such educational bulletins as he shall deem necessary for the professional improvement of teachers and for the cultivation of public sentiment for public education, and to have printed all forms necessary and proper for the administration of the Department of Public Instruction. (1955, c. 1372, art. 3, s. 3.)

§ **115-15. Duties as secretary to State Board of Education.** — As secretary, under the direction of the Board, it shall be the duty of the State Superintendent of Public Instruction:

(1) To administer through the Department of Public Instruction the instructional policies established by the Board.

(2) To keep the Board informed regarding developments in the field of public education.

(3) To make recommendations to the Board with regard to the problems and needs of education in North Carolina.

(4) To make available to the public schools a continuous program of comprehensive supervisory services.

(5) To collect and organize information regarding the public schools, on the basis of which he shall furnish the Board such tabulations and reports as may be required by the Board.

(6) To communicate to the public school administrators all information and instructions regarding instructional policies and procedures adopted by the Board.

(7) To have custody of the official seal of the Board and to attest all deeds, leases, or written contracts executed in the name of the Board. All deeds of conveyance, leases, and contracts affecting real estate, title to which is held by the Board, and all contracts of the Board required to be in writing and under seal, shall be executed in the name of the Board by the chairman and attested by the secretary; and proof of the execution, if required or desired, may be had as provided by law for the proof of corporate instruments.

(8) To attend all meetings of the Board and to keep the minutes of the proceedings of the Board in a well-bound and suitable book, which minutes shall be approved by the Board prior to its adjournment; and, as soon thereafter as possible, to furnish to each member of the Board and the controller a copy of said minutes.

(9) To perform such other duties as the Board may assign to him from time to time. (1955, c. 1372, art. 3, s. 4.)

ARTICLE 4.

Powers and Duties of Controller.

§ **115-16. Controller to be administrator of fiscal affairs.**—(a) Executive Administrator.—The controller is constituted the executive administrator of the Board in the supervision and management of the fiscal affairs of the Board.

In this capacity it shall be his duty, under the direction of the Board, to administer the funds provided for the operation of the schools of the State for one hundred eighty days on such standards as may be determined by the Board and always within the total funds appropriated therefor.

(b) Fiscal Affairs of Board Defined.—All matters pertaining to the budgeting, allocation, accounting, auditing, certification, and disbursing of public school funds, now or hereafter committed to the administration of the State Board of Education, are included within the meaning of the term "fiscal affairs of the Board" and, under the direction of the Board, shall be supervised and managed by the controller. The fiscal affairs of the Board shall also include:

(1) The preparation and administration of the State school budget, including all funds appropriated for the maintenance of the nine months' public school term.
(2) The allotment of teachers.
(3) The protection of State funds by appropriate bonds.
(4) Workmen's compensation as applicable to school employees.
(5) Sick leave.
(6) And all fiscal matters embraced in the objects of expenditure referred to in section IX, "Public Schools," in the act entitled "An Act to Make Appropriations for the Maintenance of the State's Departments, Bureaus, Institutions, and Agencies, and for Other Purposes," including therein:
    a. Support of nine months' term.
    b. State Board of Education.
    c. Vocational education.
    d. Purchase of free textbooks.
    e. Vocational textile training school.
    f. Administration of the State School Plant Construction Improvement and Repair Fund.
(7) The administration of such federal funds as may be made available by acts of Congress for the use of public schools.
(8) Administration of all State funds derived from the sale and rental of textbooks in the public schools.
(9) The operation of plant, and other auxiliary agencies under the administration of the Board.
(10) Administration of the Public School Insurance Fund. (1955, c. 1372, art. 4, s. 1.)

§ **115-17. Duties of controller defined.**—The controller, under the direction of the Board, shall perform the following duties:

(1) He shall maintain a record or system of bookkeeping which shall reflect at all times the status of all educational funds committed to the administration of the Board and particularly the following:
    a. State appropriation for maintenance of the nine months' public school term, which shall include all the objects of expenditure enumerated in G.S. 115-79.
    b. State appropriation and any other funds provided for the purchase and rental of public school textbooks.
    c. State literary and building funds and such other building funds as may be hereafter provided by the General Assembly for loans, or grants, to county boards of education for school building purposes.
    d. State and federal funds for vocational education and other funds as may be provided by act of Congress for assistance to the educational program.
    e. Vocational rehabilitation funds.

f. State appropriation for the maintenance of the Board and its office personnel and including all employees serving under the Board.

g. Any miscellaneous funds within the jurisdiction of the Board not included in the above.

(2) He shall prepare all forms and questionnaires necessary to furnish information and data for the consideration of the Board in preparing the State budget estimates required to be determined by the Board as to each administrative unit.

(3) He shall certify to each administrative unit the teacher allotment as determined by the Board under G.S. 115-59. The superintendents of the administrative units shall then certify to the State Superintendent the names of the persons employed as teachers and principals by districts. The State Superintendent shall then determine the certificate ratings of the teachers and principals, shall certify such ratings to the controller, who shall then determine in accordance with the State standard salary schedule for teachers and principals, the salary rating of each person so certified. The controller shall then determine, in accordance with the schedule of salaries established, the total cost of salaries in each county and city administrative unit for teachers and principals to be included in the State budget for the current fiscal year.

(4) He shall satisfy himself before issuing any requisition upon the Budget Bureau for payment out of the State treasury of any funds placed to the credit of any administrative unit, under the provisions of G.S. 115-84:

a. That funds are lawfully available for the payment of such requisition; and

b. Where the order covers salary payment to any employee or employees, that the amount thereof is within the salary schedule or salary rating of the particular employee.

(5) He shall procure, through the Division of Purchase and Contract, a contract or contracts for the purchase of the estimated needs and requirements of the several administrative units, covering the items of janitor's supplies, instructional supplies, supplies used by the State Board of Education, and all other supplies, the payment for which is made from funds committed to the administration of the Board.

(6) He shall purchase from the various publishers the textbooks needed and required in the public schools in accordance with contracts made by the State Board of Education.

(7) He shall, in cooperation with the State Auditor, have jurisdiction in the auditing of all school funds, under the provisions of G.S. 115-97, and also in the auditing of all other funds which by law are committed to the administration of the Board.

(8) He shall attend all meetings of the Board and shall furnish all such information and data concerning the fiscal affairs of the Board as the Board may require.

(9) He shall employ all necessary employees who work under his direction in the administration of the fiscal affairs of the Board.

(10) He shall report directly to the Board upon all matters coming within his supervision and management.

(11) He shall furnish to the State Superintendent such information relating to fiscal affairs as may be necessary in the administration of his official duties.

(12) He shall perform such other duties as may be assigned to him by the Board from time to time. (1955, c. 1372, art. 4, s. 2.)

Article 5.

County and City Boards of Education.

§ **115-18. How constituted.** — The county board of education in each county shall consist of the number of members which have been or may be appointed by the General Assembly in its biennial act or acts appointing members of boards of education. The term of office shall be for two years, except as may be otherwise provided in the said act or acts; provided that this section shall not have the effect of repealing any local or special acts relating to the boards of education of any particular counties. (1955, c. 1372, art. 5, s. 1.)

Local Modification. — Burke: 1963, c. 1138; Camden: 1965, c. 594, s. 3; McDowell: 1957, c. 144; Orange: 1959, c. 176.

A member of the county board of education holds a public office under the State and is thus subject to the prohibition against double office holding contained in Art. XIV, § 7, N.C. Const. Edwards v. Yancey County Bd. of Educ., 235 N.C. 345, 70 S.E.2d 170 (1952).

Under § 7, Art. XIV, of the Constitution one person cannot hold the office of county commissioner and also be a member of the county board of education. State ex rel. Barnhill v. Thompson, 122 N.C. 493, 29 S.E. 720 (1898).

Cited in Walker v. Moss, 246 N.C. 196, 97 S.E.2d 836 (1957); Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958); State Highway Comm'n v. Greensboro City Bd. of Educ., 265 N.C. 35, 143 S.E.2d 87 (1965).

§ **115-19. How nominated and elected.**—Nominations for membership on county boards of education shall be made biennially at party primaries or conventions at the same time and in the same manner as that in which other county officers are nominated. At such primaries or conventions each political party shall nominate members of county boards of education to take the place of the members of such boards whose terms next expire. The names of the persons so nominated in each county shall be duly certified by the chairman of the county board of elections within ten days after their nomination is declared to the State Superintendent of Public Instruction, who shall transmit the names of all persons so nominated, together with the name of the political party nominating them, to the chairman of the committee on education of the House of Representatives in the next regular session of the General Assembly within ten days after it convenes. The General Assembly shall elect or appoint one or more, from the candidates so nominated, members of the county board of education for such county. Upon failure of the General Assembly to elect or appoint members as herein provided, such failure shall constitute a vacancy, which shall be filled by the State Board of Education. The term of office of each member shall begin on the first Monday in April of the year in which he is elected, and shall continue until his successor is elected and qualified. This section shall not have the effect of repealing any local or special acts relating to the boards of education of any particular counties. (1955, c. 1372, art. 5, § 2.)

Local Modification.—Buncombe: 1953, c. 632; Burke: 1963, c. 1138; Camden: 1965, c. 594, s. 3; Durham: 1957, c. 429; Graham: 1961, c. 475, and 1965, c. 404, repealing 1959, c. 85; Haywood: 1953, c. 1259; Henderson: 1961, c. 142; Iredell: 1957, c. 951; Jackson: 1959, c. 78; Lee: 1953, c. 705; Macon: 1965, c. 601; Pitt: 1965, cc. 89, 656; Robeson: 1963, c. 240; Stokes: 1965, c. 967; Surry: 1953, c. 780, s. 4.

Editor's Note. — Session Laws 1959, c. 436, provides that notwithstanding any public-local or local act to the contrary, the members of the board of education of Polk County shall be nominated and elected as prescribed by this section.

Section 4 of c. 89, Session Laws 1965, provides that art. 5, c. 115, of the General Statutes "shall be applicable to Pitt County except as modified, or when in conflict with the provisions of this act."

As to former statute, see State ex rel. Atkins v. Fortner, 236 N.C. 264, 72 S.E.2d 594 (1952).

Cited in Walker v. Moss, 246 N.C. 196, 97 S.E.2d 836 (1957).

§ **115-20. County board of elections to provide for nominations.**— The county board of elections, under the direction of the State Board of Elections, shall make all necessary provisions for such nominations as are herein provided for. (1955, c. 1372, art. 5, s. 3.)

Local Modification. — Burke: 1963, c. 1138.

§ 115-21. City board of education, how constituted; how to employ principals, teachers, janitors and maids.—The board of education for any city administrative unit shall be appointed or elected as now provided by law. If no provision is now made by law for the filling of vacancies in the membership of any city board of education, such vacancy may be filled by the governing body of the city or town embraced by said administrative unit. In the event that any such vacancy is not filled in this manner within thirty days, the State Board of Education may fill such vacancy or vacancies.

In the city administrative units, principals and teachers shall be elected and janitors and maids appointed by the board of education of such administrative unit upon the recommendation of the superintendent of city schools. (1955, c. 1372, art. 5, s. 4.)

Final Authority for Election of Teachers Vested in Board. — The superintendent makes recommendations, but the final authority for the election of teachers is vested in the school board. Johnson v. Gray, 263 N.C. 507, 139 S.E.2d 551 (1965).

§ 115-22. Members to qualify.—Those persons who shall be elected or appointed members of the county board of education by the General Assembly, and those persons elected or appointed members of the city board of education, must qualify by taking the oath of office on or before the first Monday in April next succeeding their election or appointment. A failure to qualify within that time shall constitute a vacancy: Provided, that in the event that the General Assembly shall fail to elect members of the board of education by the first Monday in April, members shall qualify as soon as practicable after they are elected. Those persons elected or appointed to fill a vacancy must qualify within thirty days after notification. A failure to qualify within that time shall constitute a vacancy. This section shall not have the effect of repealing any local or special acts relating to the boards of education of any particular counties. (1955, c. 1372, art. 5, s. 5.)

Effect of Failure to Qualify on Day Prescribed.—A county board of education is a body politic and corporate, and is authorized to prosecute and defend suits in its own name, and to discharge certain duties imposed by statute, and where the members of the board appointed by the General Assembly failed to take the oath of office on the date prescribed by statute, but took oath on the next succeeding day, their failure to qualify on the day prescribed did not impair the existence of the corporate body, and where they had discharged the statutory duties imposed upon them, and no vacancy had been declared by the State Board of Education, and no proceedings in the nature of quo warranto had been instituted to determine their right to office, the acts of the appointees as members of the board could not be annulled by a proceeding to restrain the board from purchasing a school site in discharge of its statutory duties. Crabtree v. Bd. of Educ., 199 N.C. 645, 155 S.E. 550 (1930).

§ 115-23. Vacancies in nominations for membership on county boards.—If any candidate shall die, resign, or for any reason become ineligible or disqualified between the date of his nomination and the time for the election by the General Assembly of the members of the county board of education for the county of such candidate, the vacancy caused thereby may be filled by the action of the county executive committee of the political party of such candidate. (1955, c. 1372, art. 5, s. 6.)

§ 115-24. Vacancies in office.—All vacancies in the membership of the board of education in such counties by death, resignation, or otherwise, shall be filled by the action of the county executive committee of the political party of the member causing such vacancy until the meeting of the next regular session of the General Assembly, and then for the residue of the unexpired term by that body. If the vacancy to be filled by the General Assembly in such cases shall have occurred before the primary or convention held in such county, then in that event nominations for such vacancies shall be made in the manner hereinbefore set out, and such vacancy shall be filled from the candidates nominated to fill such vacancy by the party primaries or conventions of such county. All such vacancies that are not filled by the county executive committee under the authority herein contained within thirty days from the occurrence of such vacancies shall be filled by appointment by the State Board of Education. This section shall not have the effect of repealing any local or special act relating to the board of education of any county. (1955, c. 1372, art. 5, s. 7.)

Local Modification. — Stokes: 1965, c. 967.

Purpose of Section.—The county board of education becomes incapable of performing its corporate functions whenever vacancies reduce its membership below the number required to constitute a quorum. In order to obviate the legal paralysis incident to such an eventuality and to maintain the county board of education at its full membership, the legislature has expressly authorized by this section county executive committees of political parties and the State Board of Education to fill vacancies occurring in the membership of the board. Edwards v. Yancey County Bd. of Educ., 235 N.C. 345, 70 S.E.2d 170 (1952).

Unexpired Term Divided into Two Parts.—When this section is reduced to simple terms, it specifies that whenever a vacancy occurs in the membership of a county board of education, the resulting unexpired term is divided into two parts; that the first part begins as soon as the vacancy occurs and continues until the meeting of the next regular session of the General Assembly, and the second part embraces all of the unexpired term thereafter remaining; that the power to fill the vacancy for the first part of the unexpired term resides in the county executive committee of the political party of the former member whose office is vacant during the thirty days next succeeding the occurrence of the vacancy, but passes to and vests in the State Board of Education in case the appropriate county executive committee does not fill the vacancy for the first part of the unexpired term within the thirty days specified; and that the power to fill the vacancy for the second part of the unexpired term belongs to the General Assembly exclusively. State ex rel. Atkins v. Fortner, 236 N.C. 264, 72 S.E.2d 594 (1952).

The second sentence of this section does not undertake to compel the county executive committee or the State Board of Education to fill vacancies in the membership of the county board of education for the first part of the unexpired term from the candidates nominated by the party primaries or conventions of the county. According to its express wording, this sentence applies only to vacancies "to be filled by the General Assembly," i.e., vacancies for the second parts of unexpired terms. State ex rel. Atkins v. Fortner, 236 N.C. 264, 72 S.E.2d 594 (1952).

§ **115-25. Eligibility for board membership.**—No one shall be eligible to serve as a member of a county or city board of education who is not known to be a person of intelligence, good moral character, good business qualifications, and known to be in favor of public education. No person while actually engaged in teaching in the public schools, or serving as an employee of the schools, or engaged in teaching in or conducting a private school in connection with which private school there is in any manner conducted a public school, no member of a district committee, and no person prohibited by Article XIV, § 7, of the Constitution, shall be eligible as a member of a county or city board of education. (1955, c. 1372, art. 5, s. 8.)

Local Modification. — Cumberland and Robeson: 1963, c. 311.

§ **115-26. Organization of board.**—At the first meeting of the new county board in April, the members of all such boards as shall have been appointed by the retiring General Assembly shall organize by electing one of their members as chairman for a period of one year, or until his successor is elected and qualified. The chairman of the county board of education shall preside at the meetings of the board, and in the event of his absence or sickness, the board may appoint one of their members temporary chairman. The superintendent of schools, whether a county or city superintendent, shall be ex officio secretary to his respective board. He shall keep the minutes of the meetings of the board but shall have no vote: Provided, that in the event of a vacancy in the superintendency, the board may elect one of its members to serve temporarily as secretary to the board. (1955, c. 1372, art. 5, s. 9.)

Local Modification. — Moore: 1959, c. 977, s. 1.

§ 115-27. Board a body corporate.—The board of education of each county in the State shall be a body corporate by the name and style of "The .... County Board of Education," and the board of education of each city administrative school unit in the State shall be a body corporate by the name and style of "The .... City Board of Education." The several boards of education, both county and city, shall hold all school property and be capable of purchasing and holding real and personal property, of building and repairing schoolhouses, of selling and transferring the same for school purposes, and of prosecuting and defending suits for or against the corporation.

Where there is public school property now in the possession of school committees who were bodies corporate prior to January first, one thousand nine hundred, or who become bodies corporate by special act of the General Assembly but who have since ceased to be bodies corporate; and where land or lands were conveyed by deed bearing date prior to January first, one thousand nine hundred, to local trustees for school purposes, and such deed makes no provision for successor trustees to those named in said deed, and all of such trustees are dead; and where such land or lands are not now being used for educational purposes either by the county board of education or the city board of education of a city administrative unit wherein same are located, the clerk of the superior court of the county wherein such property or such land or lands are located shall convey said property or land or lands to the board of education of the administrative unit in which the land or lands are located.

County and city boards of education, subject to any paramount powers vested by law in the State Board of Education or any other authorized agency shall have general control and supervision of all matters pertaining to the public schools in their respective administrative units; they shall execute the school laws in their units; and shall have authority to make agreements with other boards of education to transfer pupils from one administrative unit to another unit when the administration of the schools can be thereby more efficiently and more economically accomplished. (1955, c. 1372, art. 5, s. 10.)

Board Has Legal Existence Apart from Members.—Since the county board of education is a corporate body, it necessarily has a legal existence separate and apart from its members. Edwards v. Yancey County Bd. of Educ., 235 N.C. 345, 70 S.E.2d 170 (1952); McLaughlin v. Beasley, 250 N.C. 221, 108 S.E.2d 226 (1959).

Committees are not given final authority. Their acts are under, subordinate to, and controlled by, the county or city boards. Revels v. Oxendine, 263 N.C. 510, 139 S.E.2d 737 (1965).

Actions against Board.—A county school board under the provisions of this section is a body corporate, and while it may sue and be sued in its corporate name, this fact, standing alone, is not determinative as to what actions may be maintained against it. Eller v. Board of Educ., 242 N.C. 584, 89 S.E.2d 144 (1955).

A county school board of education has immunity from liability for torts of its members or agents except such liability as may be established under our Tort Claims Act, § 143-291 et seq. Eller v. Board of Educ., 242 N.C. 584, 89 S.E.2d 144 (1955); Fields v. Durham City Bd. of Educ., 251 N.C. 699, 111 S.E.2d 910 (1960).

The Tort Claims Act, applicable to the State Board of Education and to the State departments and agencies, except as amended by § 143-300.1, does not include local units such as county and city boards of education. Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

Tort action against city school board based on negligence of employee not allowed on grounds of governmental immunity. See Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

An adjoining property owner was entitled to maintain an action against county school board for recovery of compensation for an alleged taking of plaintiff's land arising out of the construction and operation of a sewage disposal device by the school board which allegedly rendered plaintiff's spring unfit for use and his dwelling unfit for habitation, since complaint did not allege or attempt to allege a cause of action in tort. Eller v. Board of Educ., 242 N.C. 584, 89 S.E.2d 144 (1955).

An action may be maintained against a county board of education on a teacher's contract. Kirby v. Stokes County Bd. of Educ., 230 N.C. 619, 55 S.E.2d 322 (1949).

Stated in State Highway Comm'n v. Greensboro City Bd. of Educ., 265 N.C. 35, 143 S.E.2d 87 (1965).

Cited in Morrow v. Mecklenburg County Bd. of Educ., 195 F. Supp. 109 (W.D.N.C. 1961).

§ 115-28. Meetings of the board.—All county and city boards of education shall meet on the first Monday in January, April, July, and October of each year, or as soon thereafter as practicable. A board may elect to hold regular monthly meetings, and to meet in special session upon the call of the chairman or of the secretary as often as the school business of the administrative unit may require. (1955, c. 1372, art. 5, s. 11.)

A county board of education has no authority to transact business except at a regular or special meeting, and statements or promises made by the individual members thereof have no binding effect on the board unless it expressly authorized them. Kistler v. Randolph County Bd. of Educ., 233 N.C. 400, 64 S.E.2d 403 (1951).

Attended by a Quorum. — A county board of education can exercise its power only in a regular or special meeting attended by at least a quorum of its members. It cannot perform its functions through its members acting individually, informally, and separately. Iredell County Bd. of Educ. v. Dickson, 235 N.C. 359, 70 S.E.2d 14 (1952).

The statute creating the county board of education does not specify in terms the number of members competent to transact its corporate business in the absence of other members. As a consequence, the common-law rule that a majority of the whole membership is necessary to constitute a quorum applies. Edwards v. Yancey County Bd. of Educ., 235 N.C. 345, 70 S.E.2d 170 (1952).

That action by a board of education was taken at a special meeting rather than a regular meeting has no bearing on the question of the bad faith or abuse of discretion in taking such action, since special meetings are permitted by this section. Kistler v. Randolph County Bd. of Educ., 233 N.C. 400, 64 S.E.2d 403 (1951).

§ 115-29. Compensation of board members.—County and city boards of education may fix the compensation for each member not to exceed five dollars ($5.00) per diem and seven cents (7¢) per mile to and from the places of meeting and no member of the board of education shall receive any compensation for any services rendered except the per diem provided herein for attending meetings of the board or such other traveling expenses as may be incurred while performing duties imposed upon any member by authority of the board.

The State Nine Months School Fund shall provide one hundred dollars ($100.00) of the cost of the per diem and mileage of each county board of education. Funds for the per diem and a mileage for all meetings of city boards of education and for the per diem and expenses of any meetings of the county board of education in excess of the one hundred dollars ($100.00) provided by the State, shall be provided from the current expense fund budget of such city or county.

This section shall not have the effect of repealing any local or special act relating to the compensation or expenses of members of any county or city boards of education. (1955, c. 1372, art. 5, s. 12.)

Local Modification. — Ashe: 1957, c. 1125; Catawba: 1955, c. 69; Clay: 1957, c. 924, s. 5; Craven: 1957, c. 97; Franklin: 1957, c. 289; Harnett: 1957, c. 339; Hyde:

1953, c. 606, s. 2; Jackson: 1957, c. 68; Orange: 1953, c. 281, s. 1; 1963, c. 516; Polk: 1957, c. 210, amending 1953, c. 1175; Richmond: 1957, c. 451; Rockingham: 1957, c. 655; Surry: 1959, c. 914; Transylvania: 1953, c. 1320; 1957, c. 174, s. 6.

§ **115-30. Removal of member of county or city board.**—In case the State Superintendent of Public Instruction shall have sufficient evidence that any member of a county or city board of education is not capable of discharging, or is not discharging, the duties of his office as required by law, or is guilty of immoral or disreputable conduct, he shall notify the chairman of such board of education, unless such chairman is the offending member, in which case all other members of such board shall be notified. Upon receipt of such notice there shall be a meeting of said board of education for the purpose of investigating the charges, and if the charges are found to be true, such board shall declare the office vacant: Provided, that the offending member shall be given proper notice of the hearing and that record of the findings of the other members shall be recorded in the minutes of such board of education. (1955, c. 1372, art. 5, s. 13.)

§ **115-31. Suits and actions.**—(a) A county or city board of education shall institute all actions, suits, or proceedings against officers, persons, or corporations, or their sureties, for the recovery, preservation, and application of all money or property which may be due to or should be applied to the support and maintenance of the schools, except in case of a breach of his bond by the treasurer of the county school fund, in which case action shall be brought by the board of county commissioners.

(b) In all actions brought in any court against a county or city board of education, the order or action of the board shall be presumed to be correct and the burden of proof shall be on the complaining party to show the contrary. (1955, c. 1372, art. 5, s. 14.)

The right to sue for the protection or recovery of the school funds of a particular school administrative unit belongs by necessary implication to the governing board of that unit. Indeed, this section confers upon the county board of education in explicit terms the power to sue for the preservation and recovery of the money or property of the county administrative unit. Branch v. Robeson County Bd. of Educ., 233 N.C. 623, 65 S.E.2d 124 (1951).

Cited in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

§ **115-32. Power to subpoena and to punish for contempt.**—County and city boards of education shall have power to issue subpoenas for the attendance of witnesses. Subpoenas may be issued in any and all matters which may lawfully come within the powers of a board and which, in the discretion of the board, requires investigation; and it shall be the duty of the sheriff or any process serving officer to serve such subpoenas upon payment of their lawful fees.

County and city boards of education shall have power to punish for contempt for any disorderly conduct or disturbance tending to disrupt them in the transaction of official business. (1955, c. 1372, art. 5, s. 15.)

§ **115-33. Witness failing to appear; misdemeanor.** — Any witness who shall wilfully and without legal excuse fail to appear before a county or city board of education to testify in any matter under investigation by the board shall be guilty of a misdemeanor, and shall be fined not more than fifty dollars ($50.00) or imprisoned not more than thirty days. (1955, c. 1372, art. 5, s. 16.)

§ **115-34. Appeals to board of education and to superior court.**—An appeal shall lie from the decision of all school personnel to the appropriate county or city board of education. In all such appeals it shall be the duty of the board of education to see that a proper notice is given to all parties concerned and that a record of the hearing is properly entered in the records of the board conducting the hearing.

An appeal shall lie from the decision of a county or city board of education to the superior court of the State in any action of a county or city board of education affecting one's character or right to teach. (1955, c. 1372, art. 5, s. 17.)

Where the county board of education ordered the removal of school committeemen, and the committeemen appealed to the superior court, the judgment of the superior court judge holding the act of the board of education in removing the committeemen invalid and dismissing the appeal for want of jurisdiction was inconsistent and erroneous. Board of Educ. v. Anderson, 200 N.C. 57, 156 S.E. 153 (1930).

§ 115-35. Powers and duties of county and city boards generally.—(a) To Provide an Adequate School System.—It shall be the duty of county and city boards of education to provide an adequate school system within their respective administrative units, as directed by law.

(b) General Powers and General Control.—All powers and duties conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other official, are conferred and imposed upon county and city boards of education. Said boards of education shall have general control and supervision of all matters pertaining to the public schools in their respective administrative units and they shall enforce the school law in their respective units.

(c) Power to Divide Administrative Units into Attendance Areas. — County boards of education shall have authority to divide their various units into attendance areas without regard to district lines, and city boards of education shall have authority to divide their various units into attendance areas.

(d) Power to Regulate Extra Curricular Activities. — County and city boards of education shall make all rules and regulations necessary for the conducting of extra curricular activities in the schools under their supervision, including a program of athletics, where desired, without assuming liability therefor; provided, that all interscholastic athletic activities shall be conducted in accordance with rules and regulations prescribed by the State Board of Education.

(e) Fixing Time of Opening and Closing Schools.—The time of opening and closing the public schools shall be fixed and determined by county and city boards of education in their respective administrative units. Different opening and closing dates may be fixed for schools in the same administrative unit but all schools using the same buses for transportation of pupils must open and close at the same time.

(f) Power to Regulate Fees, Charges and Solicitations. — County and city boards of education shall adopt rules and regulations governing solicitations of, sales to, and fund raising activities conducted by, the students and faculty members in schools under their jurisdiction, and no fees, charges, or costs shall be collected from students and school personnel without approval of the board of education as recorded in the minutes of said board; provided, this section shall not apply to such textbook fees as are determined and established by the State Board of Education. All schedules of fees, charges and solicitations approved by county and city boards of education shall be reported to the State Superintendent of Public Instruction.

(g) Acceptance and Administration of Federal or Private Funds.—County and city boards of education shall have power and authority to accept, receive and administer any funds or financial assistance given, granted or provided under the provisions of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362) and under the provisions of the Economic Opportunity Act of 1964 (Public Law 88-452, 88th Congress, S. 2642), or other federal acts or funds from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds. In the administration of such funds, county and city boards of education shall have authority to enter into contracts with and to cooperate with and to carry out projects with nonpublic elementary and secondary schools, community groups and nonprofit corporations, and to enter into joint agreements for these purposes with other county and city boards of education. County and city boards of education shall furnish such information as shall be requested by the State Board of Education, from time to time, relating to any programs related or conducted pursuant to this section. (1955, c. 1372, art. 5, s. 18; 1957, c. 262; 1963, c. 425; 1965, c. 1185, s. 1.)

Local Modification.—Person, as to subsection (d): 1957, c. 183.

Editor's Note.—The 1963 amendment added subsection (f).

The 1965 amendment added subsection (g).

Selection of School Sites.—The county board of education is given discretionary powers to direct and supervise the county school system for the benefit of all the children therein, including the duty, among others, of selecting a school site, with which the courts will not interfere in the absence of its abuse. McInnish v. Board of Educ., 187 N.C. 494, 122 S.E. 182 (1924).

Location, Transfer, etc., of Schools.—In the absence of statutory limitations upon the power to perform this duty, discretion is vested in said boards to locate, discontinue, transfer and establish high schools in the districts of their several counties. In the absence of abuse, this discretion cannot be set aside or controlled by the courts. The principle stated and applied in deciding the question presented by the appeal in Newton v. School Comm., 158 N.C. 186, 73 S.E. 886 (1923), is well settled. Clark v. McQueen, 195 N.C. 714, 143 S.E. 528 (1928).

The statutes vest in the sound discretion of the board of education of a county the right to transfer an existing school in one district to an adjoining district for the advantage of the residents of the county, and with the fair exercise of this discretion, or in the absence of manifest abuse, the courts will not interfere, or give injunctive relief. Clark v. McQueen, 195 N.C. 714, 143 S.E. 528 (1928). But see § 115-76.

The courts may compel a county board of education to act upon discretionary powers conferred on them by the legislature, but cannot tell them how they must act. Key v. Board of Educ., 170 N.C. 123, 86 S.E. 1002 (1915).

The phrase "without assuming liability therefor" in subsection (d) of this section was inserted for the purpose of making it clear that governing authorities were not waiving governmental immunity from torts, and does not restrict the power of such boards to contract for transportation or other required items necessary in connection with duly approved interscholastic activities. State ex rel. North Carolina Util. Comm'n v. McKinnon, 254 N.C. 1, 118 S.E.2d 134 (1961).

Where the county purchasing agent purchases equipment for a school and gives a note for the same signed by him in the name of the school, the county is not liable on the note, the purchasing agent having no connection with the county board of education. Keith v. Henderson County, 204 N.C. 21, 167 S.E. 481 (1933).

Quoted in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

§ 115-36. Length of school day, school month, and school term.—(a) School Day.—The length of the school day shall be determined by the several county and city boards of education for all public schools in their respective administrative units, and the minimum time for which teachers shall be employed in the schoolroom or on the grounds supervising the activities of children shall not be less than six hours.

(b) School Month.—A school month shall consist of twenty teaching days. Schools shall not be taught on Saturdays unless the needs of agriculture, or other conditions in the unit or district make it desirable that school be taught on such days. Whenever it is desirable to complete the school term of one hundred eighty days in a shorter term than nine calendar months, the board of education of any administrative unit may, in its discretion, require that school shall be taught on legal holidays, except Sundays, and in accordance with the custom and practice of such community.

(c) School Term.—There shall be operated in every school in the State a uniform school term for instructing pupils of one hundred eighty days: Provided, that the State Board of Education, or the board of education of any administrative unit with the approval of the State Board of Education, may suspend the operation of any school or schools in such units, not to exceed a period of sixty days of said term of one hundred eighty days, when in the sound judgment of the State

Board of Education, or the board of education of any administrative unit with the approval of the State Board of Education, the low average of daily attendance in any school justifies such suspension: Provided, further, that when the operation of any school is suspended no teacher therein shall be entitled to pay for any portion of the suspended term.

Full authority is hereby given to the State Board of Education during any period of emergency to order general and, if necessary, extended recesses or adjournment of the public schools in any section of the State where the planting or harvesting of crops or any emergency conditions make such action necessary. (1955, c. 1372, art. 5, s. 19; 1963, c. 1223, s. 2.)

Editor's Note.—The 1963 amendment deleted the former last sentence of subsection (a) which read as follows: "Boards of education, however, may authorize rural schools in certain seasons of the year, when the agricultural needs of the farm demand it, to be conducted for less than six hours a day." It further amended subsection (c) by deleting the words "or when the State Board of Education, or the board of education of any administrative unit with the approval of the State Board of Education, shall find that the needs of agriculture, or any other condition, may make such suspension necessary within such unit or any district thereof" preceding the proviso at the end of the first paragraph thereof.

§ 115-37. Subjects taught in public schools. — County and city boards of education shall provide for the efficient teaching in each grade of all subjects included in the outline course of study prepared by the State Superintendent of Public Instruction, which course of study shall include instruction in Americanism, government of the State of North Carolina, government of the United States, fire prevention, alcoholism, and narcoticism at the appropriate grade levels. (1955, c. 1372, art. 5, s. 20; 1957, cc. 845, 1101.)

Cross References.—As to further provisions for teaching of "fire prevention" in the colleges and schools of the State, see § 69-7. As to instruction in the prevention of forest fires, see § 113-60.

§ 115-38. Kindergartens. — County and city boards of education may provide for their respective administrative units, or for any district in a county administrative unit, kindergartens as a part of the public school system when a tax to support same is authorized by a majority of the voters at an election held in such unit or district under provisions for holding school elections herein.

Such kindergarten instruction as may be established under the provisions of this section, or established in any other manner, shall be subject to the supervision of the State Department of Public Instruction and shall be operated in accordance with standards adopted by the State Board of Education. (1955, c. 1372, art. 5, s. 21.)

§ 115-39. Requirements and limitations of board in selecting superintendent and his term of office.—At a meeting to be held on the first Monday in April, one thousand nine hundred fifty-seven, or as soon thereafter as practicable, and biennially thereafter during the month of April, the various county boards of education named by the General Assembly which convened in February of such year or elected by the people at the preceding general election, as the case may be, shall meet and elect a county superintendent of schools, subject to the approval of the State Superintendent of Public Instruction and the State Board of Education. Such superintendent shall take office on the following July first and shall serve for a term of two years, or until his successor is elected and qualified. A certification to the county board of education by the State Superintendent of Public Instruction showing that the person proposed for the office of county superintendent of schools holds a superintendent's certificate and has had three years' experience in school work in the past ten years, together with a doctor's certificate showing the person to be free from any contagious or communicable disease, shall make any person eligible for this office: Provided, the requirement of a superintendent's certificate shall not be applicable to persons now serving as superintendents. Immediately after the election, the chairman of the county board of education shall report the name and address of the person elected to the State Superintendent of Public Instruction.

If any board of education shall elect a person to serve as superintendent of schools in any administrative unit who is not qualified, or cannot qualify, according to this section, such election is null and void and it shall be the duty of such board of education to elect a person who can qualify.

In all city adminstrative units, the superintendent of schools shall be elected by the city board of education of such unit, to serve for a period of two years; and the qualifications, provisions, approval, and date of election shall be the same as for county superintendents. (1955, c. 1372, art. 5, s. 22; 1957, c. 686, s. 1.)

Local Modification.—Clay (as to term of office of county superintendent): 1953, c. 706; Davidson: 1965, c. 271; Lee (as to term of office of county superintendent): 1963, c. 481.

§ 115-40. Office, equipment, and clerical assistants for superintendent.—It shall be the duty of the various boards of education to provide the superintendent of schools with an appropriate office. Likewise, it shall be the duty of the various boards of education to furnish adequately the superintendent's office and provide all necessary office supplies. Authority is hereby given to boards of education to employ sufficient clerical assistants and purchase sufficient office machines and equipment to the end that the business of the superintendent of schools shall always be conducted in a prompt and efficient manner. (1955, c. 1372, art. 5, s. 23.)

§ 115-41. Prescribing duties of superintendent not in conflict with law.—All acts of county and city boards of education, not in conflict with State law, shall be binding on the superintendent, and it shall be his duty to carry out all rules and regulations of the board. (1955, c. 1372, art. 5, s. 24.)

§ 115-42. Removal of county or city superintendent.—County or city boards of education are authorized to remove a superintendent who is guilty of immoral or disreputable conduct or who shall fail or refuse to perform the duties required of him by law. In case the State Superintendent of Public Instruction shall have sufficient evidence at any time that any superintendent of schools is not capable of discharging, or is not discharging, the duties of his office as required by law or is guilty of immoral or disreputable conduct, he shall report this matter to the board of education employing said superintendent of schools. It shall then be the duty of said board of education to hear the evidence in such case and, if after careful investigation it shall find the charges true, it shall declare the office vacant at once and proceed to elect a successor; provided, that such superintendent shall have the right to try his title to office in the courts of the State. (1955, c. 1372, art. 5, s. 25.)

§ 115-43. Removal of committeemen for cause.—In case the county superintendent or any member of the county board of education shall have sufficient evidence at any time that any member of any school committee is not capable of discharging, or is not discharging, the duties of his office, or is guilty of immoral or disreputable conduct, he shall bring the matter to the attention of the county board of education, which shall thoroughly investigate the charges. If the board of education finds that the evidence supports the charges made to such an extent that the actions and conduct of said committeeman are not for the best interests of the schools, then the board shall proceed to remove such committeeman and appoint his successor: Provided, that such committeeman shall be given proper notice of the hearing and that a record of the findings of the board shall be recorded in the minutes of the meeting. (1955, c. 1372, art. 5, s. 26.)

Committeeman May Be Removed Only for Cause.—A school committeeman for a district, although appointed by the county board of education, holds for a definite term, and is not removable at the will or caprice of the county board of education, but may be removed only for cause. Russ v. Board of Educ., 232 N.C. 128, 59 S.E.2d 589 (1950).

After Notice and Fair Hearing. — Any school committeeman against whom the statutory proceeding for removal is brought must be given notice of the proceeding, and of the charges against him, and afforded an opportunity to be heard and to produce testimony in his defense, and the county board of education shall not remove him from his office unless it determines, after a full and fair hearing on the merits, that one or more of the specified causes for removal has been established by the evidence. Russ v. Board of Educ., 232 N.C. 128, 59 S.E.2d 589 (1950).

Review of Board's Proceedings.—A proceeding for the removal of a school district committeeman is judicial or quasi-judicial in character, and, there being no statutory provision for appeal, the procedure to obtain a review of the board's proceedings is by certiorari. Russ v. Board of Educ., 232 N.C. 128, 59 S.E.2d 589 (1950).

Inconsistent Judgment.—Where a county board of education orders the removal of school committeemen, judgment of the superior court holding the act of the board invalid and also dismissing the appeal for want of jurisdiction is inconsistent and erroneous. Board of Educ., v. Anderson, 200 N.C. 57, 156 S.E. 153 (1930).

§ 115-44. Assistant superintendent and supervisors. — County and city boards of education shall have authority to employ an assistant superintendent, and supervisors in addition to those that may be furnished by the State when, in the discretion of the board of education, the schools of the administrative unit can thereby be more efficiently and more economically operated and when funds for the same are provided in the current expense fund budget. The duties of such assistant superintendent and supervisors shall be assigned by the superintendent with the approval of the board of education. (1955, c. 1372, art. 5, s. 27.)

§ 115-45. Authority of board over teachers, supervisors and principals.—County and city boards of education, upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals, and supervisors; the kind of reports they shall make, and their duties in the care of school property.

County and city boards of education shall have power to investigate and pass upon the character of any teacher or school official in the public schools of the unit, and to dismiss any teacher or school official for immoral or disreputable conduct as provided in G.S. 115-145; also to investigate and pass upon the fitness of any applicant for employment in any public school in the administrative unit.

If the superintendent reports to the board that the work of any teacher, principal, or supervisor is unsatisfactory or that any such person is not observing the rules and regulations of the board, the board has full authority at any time during the year, upon notice of ten days, to investigate the charges, and if sustained, to take appropriate action according to the findings of the board. (1955, c. 1372, art. 5, s. 28.)

§ 115-46. Providing for training of teachers.—County and city boards of education are authorized to provide for the professional growth of teachers while in service and to pass rules and regulations requiring teachers to cooperate with their superintendent for the improvement of instruction in the classroom and for promoting community improvement. (1955, c. 1372, art. 5, s. 29.)

§ 115-47. Pay of teachers and other school employees.—It shall be the duty of every county and city board of education to provide for the prompt monthly payment of all salaries due teachers, other school officials and employees, all current bills and other necessary operating expenses. All salaries and bills shall be paid as provided by law for disbursing State and local funds. (1955, c. 1372, art. 5, s. 30.)

Quoted in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

§ 115-48. Tax levying authorities authorized to borrow and boards of education limited in expenditures.—If the taxes for the current year are not collected when the salaries and other necessary operating expenses come due, and the money is not available for meeting such expenses, it shall be the duty of the tax levying authorities to borrow against the amount approved in the budget and to issue short term notes for the amounts so borrowed in accordance with the provisions of the County Finance Act and the Local Government Act. The interest on all such notes shall be provided by the tax levying authorities in addition to the amount approved in the budget, unless this item is specifically included in the budget. However, if a county or city board of education shall wilfully create a debt or shall in any other way cause the expenses for the year to exceed the amount authorized in the budget, without the approval of the tax levying authorities, the indebtedness shall not be a valid obligation of the county or city, as the case may be, and the members of the board responsible for making the debt may be held liable for the same. (1955, c. 1372, art. 5, s. 31.)

Local Modification. — Mecklenburg and city of Charlotte: 1959, c. 448.

Liability of County Commissioners for Debt Created by County Board of Education.—See Hampton v. Board of Educ., 195 N.C. 213, 141 S.E. 744 (1928).

§ 115-49. Salary schedule for teachers.—Every county and city board of education may adopt, as to teachers and school officials not paid out of State funds, a salary schedule similar to the State salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system; but if any county or city board of education shall fail to adopt such a schedule, the State salary schedule shall be in force. No teacher shall receive a salary higher than that provided in the salary schedule, unless by action of the board of education a higher salary is allowed for special fitness, special duties, or under extraordinary circumstances.

Whenever a higher salary is allowed, the minutes of the board shall show what salary is allowed and the reason for the same: Provided, that a county board of education, upon the recommendation of the committee of a district, may authorize the committee and the superintendent to supplement the salaries of all teachers of the district from funds derived from taxes within such district, and the minutes of the board shall show what increase is allowed each teacher in each such district. Provided, further, that when one or more local tax districts have been combined to create an administrative district, the county board of education may supplement the salaries of all teachers of each local tax district from funds derived from taxes collected within such local tax district, and the minutes of the board shall show what increase is allowed each teacher in each such district. (1955, c. 1372, art. 5, s. 32; 1965, c. 584, s. 3.)

Editor's Note. — The 1965 amendment added the proviso at the end of the section.

§ 115-50. Authority for salary vouchers.—The authority for boards of education to issue salary vouchers to all school employees, whether paid from State or local funds, shall be a monthly payroll prepared on forms furnished by the State Board of Education and containing all information required by the controller of the State Board of Education. This monthly payroll shall be signed by the principal of each school. (1955, c. 1372, art. 5, s. 33; 1965, c. 584, s. 4.)

Local Modification.—Mecklenburg: 1959, c. 378, s. 11.

Editor's Note.—The 1965 amendment rewrote the second sentence.

§ 115-51. School food services provided by county and city boards of education.—As a part of the function of the public school system, county and city boards of education may, in their discretion, provide school food services in the schools under their jurisdiction. All school food services made available under this authority shall be provided in accordance with standards and regulations recommended by the State Superintendent of Public Instruction and approved by the State Board of Education.

All school food services shall be operated on a nonprofit basis and any earnings therefrom over and above the cost of operation as defined herein shall be used to reduce the cost of food, to serve better food, or to provide free or reduced-price lunches to indigent children, and for no other purpose. The term, "cost of operation," shall be defined as actual costs incurred in the purchase and preparation of food, the salaries of personnel directly engaged in preparing and serving food, and the costs of such inexpensive and expendable nonfood supplies as outlined under standards adopted by the State Board of Education. Any costs incurred in the provision and the maintenance of school food services over and beyond the "costs of operation" as defined in this section shall be included in the budget request filed annually by county and city boards of education with boards of county commissioners. It shall not be mandatory that the provisions of G.S. 115-52 and 143-129 be complied with in the purchase of supplies and food for such school food services. (1955, c. 1372, art. 5, s. 34; 1965, c. 912.)

Editor's Note. — The 1965 amendment rewrote this section.

§ **115-52. Purchase of equipment and supplies.** — It shall be the duty of county and city boards of education to purchase or exchange all supplies, equipment and materials in accordance with contracts made by or with the approval of the Department of Administration. Title to instructional supplies, office supplies, fuel and janitorial supplies, enumerated in the current expense fund budget and purchased out of State funds, shall be taken in the name of the county or city board of education which shall be responsible for the custody and replacement: Provided, that no contracts shall be made by any county or city administrative unit for purchases unless provision has been made in the budget of such unit to provide payment therefor, or unless surplus funds are on hand to pay for same, and in order to protect the State purchase contracts, it is hereby made the mandatory duty upon the part of the governing authorities of such local units to pay for such purchases promptly in accordance with the terms of the contract of purchase. (1955, c. 1372, art. 5, s. 35; 1965, c. 840.)

Local Modification. — Mecklenburg and city of Charlotte: 1959, c. 448.

Editor's Note. — The 1965 amendment inserted "or exchange" in the first sentence and substituted "Department of Administration" for "State Division of Purchase and Contract" in that sentence.

§ **115-53. Liability insurance and waiver of immunity as to torts of agents, etc.**—Any county or city board of education, by securing liability insurance as hereinafter provided, is hereby authorized and empowered to waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent or employee of such board of education when acting within the scope of his authority or within the course of his employment. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but such immunity is waived only to the extent that said board of education is indemnified by insurance for such negligence or tort.

Any contract of insurance purchased pursuant to this section must be issued by a company or corporation duly licensed and authorized to execute insurance contracts in this State and must by its terms adequately insure the county or city board of education against any and all liability for any damages by reason of death or injury to person or property proximately caused by the negligent acts or torts of the agents and employees of said board of education or the agents and employees of a particular school in a county or city administrative unit when acting within the scope of their authority or within the course of their employment. Any company or corporaton which enters into a contract of insurance as above described with a county or city board of education, by such act waives any defense based upon the governmental immunity of such county or city board of education.

Every county or city board of education in this State is authorized and empowered to pay as a necessary expense the lawful premiums for such insurance.

Any person sustaining damages, or in case of death, his personal representative may sue a county or city board of education insured under this section for the recovery of such damages in any court of competent jurisdiction in this State, but only in the county of such board of education; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of a governmental, municipal or discretionary function of such county or city board of education if, and to the extent, such county or city board of education has insurance coverage as provided by this section.

Except as hereinbefore expressly provided, nothing in this section shall be construed to deprive any county or city board of education of any defense whatsoever to any such action for damages, or to restrict, limit, or otherwise affect any such defense which said board of education may have at common law or by virtue of any statute; and nothing in this section shall be construed to relieve any person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to said county or city board of education or to commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by statute.

A county or city board of education may incur liability pursuant to this section only with respect to a claim arising after such board of education has procured liability insurance pursuant to this section and during the time when such insurance is in force.

No part of the pleadings which relate to or allege facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. Such liability shall not attach unless the plaintiff shall waive the right to have all issues of law or fact relating to insurance in such an action determined by a jury and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony or announcement of findings of fact or conclusions of law with respect thereto unless the defendant shall request a jury trial thereon: Provided, that this section shall not apply to claims for damages caused by the negligent acts or torts of public school bus, or school transportation service vehicle drivers, while driving school buses and school transportation service vehicles when the operation of such school buses and service vehicles is paid from the State nine months' school fund.

The several county and city boards of education in the State are hereby authorized and empowered to take title to school buses purchased with local or community funds for the purpose of transporting pupils to and from athletic events and for other local school activity purposes, and commonly referred to as activity buses. The provisions of this section shall be fully applicable to the ownership and operation of such activity school buses. (1955, c. 1256; 1957, c. 685; 1959, c. 573, s. 2; 1961, c. 1102, s. 4.)

Local Modification. — Mecklenburg and city of Charlotte: 1959, c. 931.

This section, in its nature, is not retroactive. Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

Waiver of Tort Immunity Depends on Action of Board.—The legislature has not waived immunity from tort liability as to county and city boards of education, except as to such liability as may be established under the Tort Claims Act, but has left the waiver of immunity from liability for torts to the respective boards, and then only to the extent such board has obtained liability insurance to cover negligence or torts. Fields v. Durham City Bd. of Educ., 251 N.C. 699, 111 S.E.2d 910 (1960).

Without Waiver Liability Limited to Tort Claims Act.—A county board of education, unless it has duly waived immunity from tort liability, as authorized in this section, is not liable in a tort action or proceeding involving a tort, except such liability as may be established under the

Tort Claims Act. Huff v. Northhampton County Bd. of Educ., 259 N.C. 75, 130 S.E.2d 26 (1963).

Sufficiency of Complaint. — In the absence of an allegation in the complaint in a tort action against a city board of education, to the effect that such board has waived its immunity by the procurement of liability insurance to cover such alleged negligence or tort, or that such board has waived its immunity as authorized in this section, such complaint does not state a cause of action. Fields v. Durham City Bd. of Educ., 251 N.C. 699, 111 S.E.2d 910 (1960).

Applied in Dezern v. Asheboro City Bd. of Educ., 260 N.C. 535, 133 S.E.2d 204 (1963).

Cited in Branch Banking & Trust Co. v. Wilson County Bd. of Educ., 251 N.C. 603, 111 S.E.2d 844 (1960); McBride v. North Carolina State Bd. of Educ., 257 N.C. 152, 125 S.E.2d 393 (1962).

ARTICLE 6.

Powers and Duties of Superintendents.

§ 115-54. Residence, oath of office, and salary of superintendent.—Every superintendent shall reside in the county in which he is employed. The superintendent shall not teach, nor be regularly employed in any other capacity that may limit or interfere with his duties as superintendent. Each superintendent, before entering upon the duties of his office, shall take an oath for the faithful performance thereof. The salary of the superintendent shall be in accordance with a State standard salary schedule, fixed and determined by the State Board of Education as provided by law; and such salary schedule for superintendents shall be determined on the same basis for both county and city superintendents and shall take into consideration the amount of work inherent to the office of both county and city superintendents; and such schedule shall be published in the same way and manner as the schedules for teachers' and principals' salaries are now published. (1955, c. 1372, art. 6, s. 1.)

Dual Office Holding. — The office of county superintendent of public instruction is such an office as comes within the prevention of N.C. Const., Art. XIV, § 7, which prohibits the holding of more than one office by any person. Whitehead v. Pittman, 165 N.C. 89, 80 S.E. 976 (1914).

Cited in Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958); Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

§ 115-55. Vacancies in office of superintendent.—In case of vacancy by death, resignation, or otherwise, in the office of a county or city superintendent, such vacancy shall be filled by the county or city board of education in which such vacancy occurred. During the time any county or city superintendent is on an approved leave of absence, without pay, an acting superintendent may be appointed in the same manner to serve during the interim period, which appointment shall be subject to the same approvals and to the same educational qualifications as provided for superintendents. In case such position is not filled immediately on a permanent or temporary basis, or in case of absence of a superintendent on account of illness or other approved reason, the board of education, by resolution duly adopted and recorded in the minutes of such board, may assign to an employee of such school board, with the approval of the State Superintendent of Public Instruction and the controller of the State Board of Education, any duty or duties of such superintendent which necessity requires be performed during such time: Provided, that if the duty of signing warrants and checks is so assigned, said board shall give proper notice immediately to State and local disbursing officials. (1955, c. 1372, art. 6, s. 2; 1959, c. 573, s. 3.)

Cited in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

§ 115-56. Duties of superintendent as secretary to board of education.—County and city superintendents shall be ex officio secretary to their respective boards of education. As secretary to the board of education, the superintendent shall record all proceedings of the board, issue all notices and orders that may be made by the board, and otherwise be executive officer of the board of education. He shall see that the minutes of the meetings of the board of education are promptly and accurately recorded in the minute book which shall be kept in the office of the board of education and be open at all times to public inspection. It shall be the duty of every superintendent to visit the schools of his unit, to keep his board of education informed at all times as to the condition of the school plants in his adminstrative unit, and to make immediately provisions to remedy any unsafe or unsanitary conditions existing in any school building.

It shall be the duty of every superintendent to attend professional meetings conducted by the State Superintendent of Public Instruction and such other professional meetings as are necessary to keep him informed on educational matters.

It shall be the duty of every superintendent to furnish as promptly as possible to the State Superintendent when requested by him, information and statistics on any phase of the school work in his administrative unit.

The superintendent shall have authority to administer oaths to teachers and all other school officials when an oath is required of the same. (1955, c. 1372, art. 6, s. 3.)

Stated in Johnson v. Gray, 263 N.C. 507, 139 S.E.2d 551 (1965).

Cited in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

§ 115-57. Duties of superintendents toward school personnel. — It shall be the duty of the superintendent to keep himself thoroughly informed as to all policies promulgated and rules adopted by the State Superintendent of Public Instruction and the State Board of Education, for the organization and government of the public schools. The superintendent shall notify and inform his board of education, the school committees, supervisors, principals, teachers, janitors, bus drivers, and all other persons connected with the public schools, of such policies and rules. In the performance of these duties, the superintendent shall confer, work, and plan with all school personnel to achieve the best methods of instruction, school organization and school government.

The superintendent shall hold each year such teachers' meetings and study groups as in his judgment will improve the efficiency of the instruction in the schools of his unit.

The superintendent shall distribute to all school personnel all blanks, registers, report cards, record books, bulletins, and all other supplies and information furnished by the State Superintendent and the State Board of Education and give instruction for their proper use.

If the superintendent shall fail in these duties, or such other duties as may be assigned him, he shall be subject, after notice, to an investigation by the State Superintendent or by his board of education for failure to perform his duties. For persistent failure to perform these duties, his certificate may be revoked by the State Superintendent, or he may be dismissed by his board of education. (1955, c. 1372, art. 6, s. 4.)

§ 115-58. Duties with respect to election of principals, teachers and other personnel.—It shall be the duty of the county superintendent to approve, in his discretion, the election of all teachers and personnel by the several school committees of the administrative unit. He shall then present the names of all principals, teachers and other school personnel to the county board of education for approval or disapproval, and he shall record in the minutes the action of the board in this matter. Provided, that in county administrative units which elect to operate as one school district without a school committee it shall be the duty of the county superintendent to recommend and the board of education to elect all principals, teachers, and other school personnel in the county administrative unit.

It shall be the duty of the city superintendent to record in the minutes the action of the city board of education in the election of all principals, teachers and other school personnel elected upon the recommendation of the superintendent. (1955, c. 1372, art. 6, s. 5; 1965, c. 584, s. 5.)

Editor's Note. — The 1965 amendment added the proviso at the end of the first paragraph.

§ **115-59. Superintendent to prepare organization statement and request for teachers.**—On or before the twentieth day of May in each year, the superintendent of each administrative unit shall present to the State Board of Education a statement, certified by the chairman of the board of education and the superintendent, showing the organization of the schools in his unit, together with such other information as said Board may require. On the basis of such organization statement, together with all other available information, and under such rules and regulations as the State Board of Education may promulgate, said Board shall determine for each administrative unit, the number of elementary and high school teachers to be included in the State budget on the basis of the average daily attendance for the preceding year. The highest average daily attendance for a continuous six months' period of the first seven months of the preceding school year, together with other pertinent attendance data, shall be used as a basis for such allotment: Provided, that loss in attendance due to epidemics shall be taken into consideration in the initial allotment of teachers: Provided further, that the superintendent of an administrative unit shall not be included in the number of teachers and principals allotted on the basis of average daily attendance.

It shall be the duty of the superintendent and the board of education of each administrative unit, after the opening of the schools in said unit, to make a careful check of the school organization and to request the State Board of Education to make changes in the allocation of teachers to meet changed requirements of the said unit. (1955, c. 1372, art. 6, s. 6; 1963, c. 688, s. 3; 1965, c. 584, s. 6.)

Editor's Note. — The 1963 amendment inserted "together with other pertinent attendance data" in the last sentence of the first paragraph.

The 1965 amendment deleted "by districts" following "administrative unit" in the second sentence.

Cited in Fremont City Bd. of Educ. v. Wayne County Bd. of Educ., 259 N.C. 280, 130 S.E.2d 408 (1963).

§ **115-60. Superintendents shall keep proper financial records.**—It shall be the duty of each superintendent to keep in his office a complete, accurate and detailed record of all financial transactions of his board of education. Such records shall be kept in accordance with modern accounting methods and as prescribed and approved by the State Board of Education. If any superintendent shall fail to keep the records of the acts of the board of education so that they may be audited in accordance with law, the board of education may remove him from office. (1955, c. 1372, art. 6, s. 7.)

§ **115-61. County superintendents shall keep record of local taxes.**—County superintendents shall keep a separate financial record of each special taxing district in the county and no part of any funds belonging to one district shall be used for any other district, or for any other purpose than to meet the lawful expenses of such district to which the funds collected belong. (1955, c. 1372, art. 6, s. 8; 1965, c. 584, s. 7.)

Editor's Note. — The 1965 amendment deleted the former second sentence, relating to the signing of vouchers.

§ **115-62. Record of fines, forfeitures, and penalties.**—It shall be the duty of the county superintendent to keep a record of all fines, forfeitures and penalties due the school fund, and to this end all county officials who in any way handle such funds shall on demand report the same to the county superintendent; and he shall see that these funds are deposited with the treasurer and placed to the credit of the school fund. The county accountant or auditor shall furnish the superintendent on the first day of each month a list in detail of all such funds that may have been paid into the school fund during the preceding month. (1955, c. 1372, art. 6, s. 9.)

§ **115-63. Superintendents must furnish boundaries of special taxing districts.**—It shall be the duty of county superintendents, and of city superintendents where their administrative units are not coterminous with city or township limits, to furnish tax listers at tax listing time the boundaries of each taxing district and city administrative unit in which a special tax will be levied to the end that all property in such district or unit may be properly listed. (1955, c. 1372, art. 6, s. 10.)

§ **115-64. Disbursement of local funds.**—County and city local school funds shall be disbursed in the same manner as State school funds are disbursed. It shall be the duty of the county superintendent in addition to approving and signing State vouchers to approve and sign all vouchers for the disbursement of all county and district funds except funds belonging to a city administrative unit. The county treasurer shall honor no voucher that is not first approved and signed by the county superintendent. No voucher shall be signed by the county or city superintendent for more money than is provided in the county or city school budget. The county superintendent shall not sign a voucher drawn on district funds for more money than is apportioned to or raised by the special tax during the fiscal year of a special taxing school district.

County and city superintendents shall not approve and sign the voucher of any teacher who does not hold a certificate as required by law, nor for more money than the salary schedule in force in the city administrative unit or special taxing district entitles the teacher to receive.

It shall be the duty of county and city superintendents to sign all vouchers issued by order of their respective boards of education and signed by the chairman, and no voucher shall be paid by the county or city treasurer that is not thus signed. (1955, c. 1372, art. 6, s. 11.)

Approval of County Superintendent Required.—The treasurer of the school fund cannot pay out any of the money coming into his hands as such except upon order approved by the county superintendent. County Bd. v. County of Wake, 167 N.C. 114, 83 S.E. 257 (1914).

§ **115-65. Superintendent shall not pay teacher without contract.**—No voucher for the salary of a principal or teacher shall be signed by the county or city superintendent unless a copy of the contract has been filed with him: Provided, that substitute and interim teachers may be paid under rules of the State Board of Education. (1955, c. 1372, art. 6, s. 12.)

§ **115-66. When superintendent may withhold pay of teachers.**—The chairman and secretary of a county or city board of education may refuse to sign the salary voucher for the pay of any supervisor, principal or teacher who delays or refuses to render such reports as are required by law. But whenever the reports are delivered in accordance with law, the vouchers shall be signed and the supervisor, principal, or teacher paid. (1955, c. 1372, art. 6, s. 13.)

§ **115-67. Superintendents may suspend principals and teachers.**—County and city superintendents shall have authority to suspend any principal or teacher who shall fail, or who may be incompetent, to give instruction in accordance with the directions of the superintendent, or who shall wilfully refuse to cooperate in teachers' meetings: Provided, that any principal or teacher who may be suspended by the superintendent, shall have the right to appeal first to the board of education and then, if not satisfied, to the courts. (1955, c. 1372, art. 6, s. 14.)

§ **115-68. City superintendents, powers, duties and responsibilities.**—All the powers, duties and responsibilities imposed by law upon the superintendents of county administrative units shall, with respect to city administrative units, be imposed upon, and exercised by, the superintendents of city administrative units, in the same manner and to the same extent, insofar as applicable thereto, as such powers and duties are exercised and performed by superintendents of county administrative units with reference to said county administrative units. (1955, c. 1372, art. 6, s. 15.)

ARTICLE 7.

School Committees—Their Duties and Powers.

§ **115-69. Eligibility and oath of office.**—Each school committeeman shall be a person of intelligence, of good moral character, of good business qualifications, and one who is known to be in favor of public education and who resides in the district; and before entering upon the duties of his office, he shall take oath for the faithful performance thereof, which oath may be taken before the county superintendent.

No person, while employed as teacher in either a public school or a private school, or while serving as a member of any county or city board of education or serving as an employee of the schools or who is prohibited by Article XIV, § 7, of the Constitution, shall be eligible to serve as a member of a district committee. (1955, c. 1372, art. 7, s. 1.)

Editor's Note.—Session Laws 1965, c. 705, s. 19, provides that this article shall not apply to Richmond County.

§ **115-70. Appointment; number of members; terms; vacancies; advisory council.**—At the first regular meeting during the month of April, 1965, or as soon thereafter as practicable, and biennially thereafter, the county board of education named by the General Assembly which convened in February of such year or elected at the preceding general election, as the case may be, shall elect and appoint school committees for each of the several districts in their counties, consisting of not less than three, nor more than five persons, for each school district, whose term of office shall be for two years: Provided, that in county school administrative units organized as one district, the county board of education need not appoint a district school committee, in which case the county board of education shall assume the duties of the district school committee or may authorize an advisory council, or councils, to assume such duties as it may legally delegate to them. In the event of death, resignation or removal from the district of any member of said school committee, the county board of education shall be empowered to select and appoint his or her successor to serve the remainder of the term; provided, that in units desiring the same, by action of the county board of education, one third of the members may be selected for a term of one year, one third of the members for a term of two years, and one third of the members for a term of three years, and thereafter all members for a term of three years from the expiration of said terms. This section shall not have the effect of repealing any local or special acts relating to the appointment or terms of office of school committees.

A county board of education may appoint an advisory council for any school or schools within the administrative unit. The purpose and function of an advisory council shall be to serve in an advisory capacity to the board on matters affecting the school or schools for which it is appointed. The organization, terms, composition and regulations for the operation of such advisory council shall be determined by the board. (1955, c. 1372, art. 7, s. 2; 1957, c. 686, s. 2; 1965, c. 584, s. 8.)

Local Modification.—Edgecombe: 1961, c. 65; Jackson: 1963, c. 228; Polk: 1959, c. 442.

Session Laws 1961, c. 205, as amended by Session Laws 1963, c. 239, relating to school committees and increasing the number of members from five to nine, applies only to Alamance, Caswell, Columbus, Duplin, Hoke, Madison, Onslow, Orange, Rutherford and Sampson.

Editor's Note. — The 1965 amendment changed the date in the first sentence from 1957 to 1965, added the proviso at the end of that sentence and rewrote the last paragraph.

The law does not give a committee corporate status. Revels v. Oxendine, 263 N.C. 510, 139 S.E.2d 737 (1965).

Nor does the law authorize a committee to sue or defend. Revels v. Oxendine, 263 N.C. 510, 139 S.E.2d 737 (1965).

Committees are not given final authority. Their acts are under, subordinate to, and controlled by, the county or city boards. Revels v. Oxendine, 263 N. C. 510, 139 S.E.2d 737 (1965).

Removal of Committeeman. — A school committeeman for a district, although appointed by the county board of education, holds for a definite term, and is not removable at the will or caprice of the county board of education, but may be removed only for cause after notice and an opportunity to be heard. Russ v. Board of Educ., 232 N.C. 128, 59 S.E.2d 589 (1950).

§ **115-71. Organization of school committee; meetings.**—The school committee, at its first meeting after the membership has been completed by the county board of education, shall elect from its number, a chairman and secretary, who shall keep a record of its proceedings in a book to be kept for that purpose, which shall be open to public inspection. The names and addresses of the chairman and secretary shall be reported to the county superintendent and recorded by him. The committee shall meet as often as the school business of the district may require. (1955, c. 1372, art. 7, s. 3.)

§ **115-72. How to employ principals, teachers, janitors and maids.**—The district committee, upon the recommendation of the county superintendent of schools, shall elect the principals for the schools of the district, subject to the approval of the county board of education. The principal of each school shall nominate and the district committee shall elect the teachers for all the schools of the district, subject to the approval of the county superintendent of schools and the county board of education. Likewise, upon the recommendation of the principal of each school of the district, the district committee shall appoint janitors and maids for the schools of the district, subject to the approval of the county superintendent of schools and the county board of education. No election of a principal or teacher, or appointment of a janitor or maid, shall be deemed valid until such election or appointment has been approved by the county superintendent and the county board of education. No teacher under eighteen years of age may be employed, and the election of all teachers and principals and the appointment of all janitors and maids shall be done at regular or called meetings of the committee.

In the event the district committee and the county superintendent are unable to agree upon the nomination and election of a principal or the principal and the district committee are unable to agree upon the nomination and election of teachers or appointment of janitors or maids, the county board of education shall select the principal and teachers and appoint janitors and maids, which selection and appointment shall be final.

The distribution of the teachers and janitors among the several schools of the district shall be subject to the approval of the county board of education. (1955, c. 1372, art. 7, s. 4; 1965, c. 584, s. 9.)

Local Modification.—Polk: 1957, c. 1209.

Editor's Note. — The 1965 amendment substituted "each school" for "the district" near the beginning of the second sentence.

Jurisdiction of County Board of Educa-

tion to Elect Principal.—The county board of education is not authorized to elect a principal of a school unless it appears that the local school authorities are in disagreement as to such election, and therefore, in a suit to compel the county board to approve an election made by the local school authorities, a plea in abatement on the ground that the county board had already elected another to the position is probably overruled in the absence of a showing of disagreement by the local school authorities. Harris v. Board of Educ., 216 N.C. 147, 4 S.E.2d 328 (1939).

Validity of Election.—The election of a principal or teacher by the school committee of a district has no validity whatever until such election has been approved by both the county superintendent of schools and the county board of education. Iredell County Bd. of Educ., v. Dickson, 235 N.C. 359, 70 S.E.2d 14 (1952).

Refusal of the county superintendent to approve the election of a teacher on the ground that he did not have sufficiently high certificates as a teacher and that his election as a teacher would not be for the best interests of the school will not sustain the finding of the trial judge that the refusal of the county superintendent of schools to approve the election was arbitrary, captious, and without just cause, and a mandamus to cause his approval is improvidently issued by the lower court. Cody v. Barrett, 200 N.C. 43, 156 S.E. 146 (1930).

Liability of Committeeman on Employment Contract.—In Robinson v. Howard, 84 N.C. 152 (1881), it was held that a school committeeman was not liable personally on a contract by which he employed a teacher, and that the remedy was by mandamus to compel the payment of the money by the proper officer in the way provided by law. If, though, the act is wrongful and malicious, an action will lie against the officer in his personal capacity to recover damages for the wrong committed by him. Spruill v. Davenport, 178 N.C. 364, 100 S.E. 527 (1919).

As to reelection of principal or teacher, see Iredell County Bd. of Educ., v. Dickson, 235 N.C. 359, 70 S.E.2d 14 (1952).

§ 115-73. Committee's responsibility as to school property.—It shall be the duty of the school committee to protect all school property in its district. To this end, it is given custody of all schoolhouses, schoolhouse sites, grounds, textbooks, apparatus, and other school property in the district, with full power to control same as it may deem best for the interests of the public schools and the cause of education, but not in conflict with the rules and regulations of the county board of education. It shall be the duty of the committee to report any misuse or damage of school property immediately to the county board of education: Provided, that if the committee is unable or shall fail to take due care of all school property of the district, the county board of education may designate some responsible citizen of the district to have special charge of the property during vacation. (1955, c. 1372, art. 7, s. 5.)

SUBCHAPTER III. SCHOOL DISTRICT ORGANIZATION.

Article 8.

Creating and Consolidating School Districts.

§ 115-74. Creation and modification of school districts by State Board of Education.—The State Board of Education, upon the recommendation of the county board of education, shall create in any county administrative unit a convenient number of school districts. Such district organization may be modified in the same manner in which it was created when it is deemed necessary. Provided that when changes in district lines are made between and among school districts that have voted upon themselves the same rate of supplemental tax, such changes in district lines shall not have the effect of abolishing any of such districts or of abolishing any supplemental taxes that may have been voted in any of such districts.

Nothing in this section shall prevent city administrative units from consolidating with county administrative units in which such city administrative unit is located, upon petition of the board of education of the city administrative unit and the approval of the county board of education and of the State Board of Education: Provided, that nothing in this section shall affect the right of any city administrative unit or special tax district which now exists for the purpose of retiring debt service, to have the indebtedness of such district taken over by the county as provided by law, and nothing herein shall be construed to restrict the county board of education or the board of county commissioners in causing such indebtedness to be assumed by the county as provided by law. (1955, c. 1372, art. 8, s. 1; 1959, c. 432.)

Cross Reference. — As to limitation on power of legislature to change lines of school districts, see N.C. Const., Art. II, § 29.

Constitutionality of Article. — For case holding constitutional a former statute covering the same subject-matter as this article, see Sparkman v. Board of Comm'rs, 187 N.C. 241, 121 S.E. 531 (1924).

Methods of Changing School District.— See Kreeger v. Drummond, 235 N.C. 8, 68 S.E.2d 800 (1952).

Courts Will Not Interfere in Absence of Abuse of Discretion. — Unless the school authorities act contrary to law, or there is a manifest abuse of discretion on their part, the courts will not interfere with their action in creating or consolidating school districts, or in the discharge of any other discretionary duty conferred upon them by law. Kreeger v. Drummond, 235 N.C. 8, 68 S.E.2d 800 (1952).

The courts will not interfere with the control and supervision of the county board of education in the exercise of its statutory discretion given in the formation of school districts and their consolidation, or intervene in behalf of any one who supposes himself to be aggrieved by their action therein, except upon a clear showing that it was acting contrary to law, and then they will only restrain its action to the extent necessary to keep it within the law and the rightful exercise of its powers. Davenport v. Board of Educ., 183 N.C. 570, 112 S.E. 246 (1922).

Abolition of Special School Districts.— For cases construing former statute abolishing special school districts, see Board of Educ. v. Burgin, 206 N.C. 421, 174 S. E. 286 (1934); Hickory v. Catawba County, 206 N.C. 165, 173 S.E. 56 (1934).

Quoted in Peacock v. County of Scotland, 262 N.C. 199, 136 S.E.2d 612 (1964).

§ 115-75. Districts formed of portions of contiguous counties.— School districts may be formed out of contiguous counties by agreement of the county boards of education of the respective counties subject to the approval of the State Board of Education. Rules for the organization, support and operation of districts so formed are subject to the agreement of the boards of education concerned, and as a guide to the working out of such agreements the formulas contained in § 115-123 should be followed as far as applicable. (1955, c. 1372, art. 8, s. 2.)

§ 115-76. Consolidation of districts and discontinuance of schools. —County boards of education shall have the power and authority to consolidate schools located in the same district, and with the approval of the State Board of Education, to consolidate school districts or other school areas over which the board has full control, whenever and wherever in its judgment the consolidation will better serve the educational interests of the county or any part of it: Provided, existing schools having suitable buildings shall not be abolished until the county board of education has made ample provisions for transferring all children of said school to some other school.

In determining whether two or more public schools shall be consolidated, or in determining whether or not a school shall be closed and the pupils transferred therefrom, the State Board of Education and the boards of education of the several counties shall observe and be bound by the following rules, to wit:

(1) In any question involving the discontinuance or consolidation of any high school with an average daily attendance of sixty or more pupils, the board of education of the county in which such school is located and the State Board of Education shall cause a thorough study of

such school to be made, having in mind primarily the welfare of the students to be affected by a proposed consolidation and including in such study, among other factors, geographic conditions, anticipated increase or decrease in school enrollment, the inconvenience or hardship that might result to the pupils to be affected by such consolidation, the cost of providing additional school facilities in the event of such consolidation, and the importance of such school to the people of the community in which the same is located and their interest in and support of same. Before the entry of any order of consolidation, the county board of education shall provide for a public hearing in regard to such proposed consolidation, at which hearing the county and State boards of education and the public shall be afforded an opportunity to express their views. Upon the basis of the study so made and after such hearing, said boards may, in the exercise of their discretion and by concurrent action, approve the consolidation proposed: Provided, however, that when a high school is ordered closed, pursuant to law, the pupils attending such school may be assigned to another high school, if the board of education of the administrative unit in which such school is located consents to such assignment.

(2) Provision shall not be made by the State Board of Education for the operation of a high school with an average daily attendance of less than sixty pupils unless the State Board of Education and the State Superintendent of Public Instruction, after a careful survey by them, find that geographic or other conditions make it impractical to provide for such pupils otherwise. Upon such finding, the State Board of Education may make provision for the operation of such school.

(3) Notwithstanding the limitations imposed by the provisions of subdivision (2) of this section, the State Board of Education shall make provision for the continued operation of any high school now operating in any county administrative unit and having an average daily attendance of at least forty-five but fewer than sixty pupils, and shall allot to such school the number of teachers to which it may be entitled pursuant to law and rules of the State Board of Education if the continued operation of such school be requested by the board of education of such county by the inclusion of such school in the organization statement for the following year filed pursuant to the provisions of law: Provided, however, that at the time of making such request, the county board of education presents to the State Board of Education a certified statement that it has on hand and allocated for such purpose sufficient funds to pay the salaries, in accordance with the State standard salary schedule, of such additional teacher or teachers for said school as may be required in order to comply with minimum teacher requirements for a standard high school as now or hereafter defined and sufficient funds to pay the county's contribution for such teacher or teachers to the Teachers' and State Employees' Retirement System of North Carolina, as provided by G.S. 135-8 (c), and that said county board of education will employ such teacher or teachers.

For the purpose of providing the funds required by the proviso of this subdivision, the boards of commissioners of the several counties are authorized to appropriate nontax funds, and the several county boards of education are authorized to accept and use privately donated funds.

(4) The provisions of this section shall not deprive any city or county board of education of the authority to assign or enroll any and all pupils

in schools in accordance with the provisions of G.S. 115-176 to 115-179. (1955, c. 1372, art. 8, s. 3.)

Decisions under Former Statutes.—As to consolidation of tax and nontax districts, see Perry v. Bd. of Comm'rs, 183 N.C. 387, 112 S.E. 6 (1922); Paschal v. Johnson, 183 N.C. 129, 110 S.E. 841 (1922); Barnes v. Leonard, 184 N.C. 325, 114 S.E. 398 (1922); Board of Educ. v. Bray Bros. Co., 184 N.C. 484, 115 S.E. 47 (1922); Gates School Dist. Comm. v. Gates County Bd. of Educ., 235 N.C. 212, 69 S.E.2d 529 (1952); Gates School Dist. Comm. v. Gates County Bd. of Educ., 236 N.C. 216, 72 S.E.2d 429 (1952). As to issuance of bonds, see Paschal v. Johnson, 183 N.C. 129, 110 S.E. 841 (1922). As to reallocation of funds from bond issues, see Gore v. Columbus County, 232 N.C. 636, 61 S.E.2d 890 (1950). As to consolidation as prerequisite to closing high school operated as union school, see Kreeger v. Drummond, 235 N.C. 8, 68 S.E.2d 800 (1952). As to providing ample facilities in consolidated district, see Kreeger v. Drummond, 235 N.C. 8, 68 S.E.2d 800 (1952). As to discretionary authority of county board of education, see Gore v. Columbus County, 232 N.C. 636, 61 S.E.2d 890 (1950). As to enjoining or setting aside creation or consolidation of school districts, see Gates School Dist. Comm. v. Gates County Bd. of Educ., 236 N.C. 216, 72 S.E.2d 429 (1952). As to circumstances insufficient to show abuse of discretion in consolidating school districts, see Gates School Dist. Comm. v. Gates County Bd. of Educ., 236 N.C. 216, 72 S.E.2d 429 (1952). As to transfer of pupils, see Kreeger v. Drummond, 235 N.C. 8, 68 S.E.2d 800 (1952).

§ 115-77. Enlarging tax districts and city units by permanently attaching contiguous property.—The county boards of education with the approval of the State Board of Education may transfer from nontax territory and attach permanently to local tax districts or to city administrative units, real property contiguous to said local tax districts or city administrative units, upon the written petition of the owners thereof and the taxpayers of the family or families living on such real property, and there shall be levied upon the property of each individual in the area so attached, including landowners and tenants, the same tax as is levied upon other property in said district or unit: Provided, that such transfer shall be subject to the approval of the board of education of such city unit or the committee of such tax district, as the case may be. Provided the petition must be signed by persons who are the owners thereof and the taxpayers of the families living on such real property on the date the petition is filed with the county board of education. Provided further, that a person or corporation owning only an easement in real property shall not be considered an owner of said property within contemplation of this section; and provided further that no right of action or defense founded upon the invalidity of such transfer shall be asserted, nor shall the validity of such transfer be open to question in any court upon any ground whatever, except in an action or proceeding commenced within sixty (60) days after the approval of such transfer is given by the State Board of Education. (1955, c. 1372, art. 8, s. 4; 1959, c. 573, s. 4.)

SUBCHAPTER IV. REVENUE FOR THE PUBLIC SCHOOLS.

Article 9.

County and City Boards of Education and Budgets.

§ 115-78. Objects of expenditure for operation of public schools.—(a) The objects of expenditure for the operation of the public school system shall be listed by county and city boards of education in the school budget under three separate funds: The current expense fund; the capital outlay fund; and the debt service fund.

(b) The current expense fund shall include:

(1) General Control.—Salaries and travel of superintendent, assistant superintendent, business manager, and attendance counselor; salaries of clerical assistants, property cost clerks, and the treasurer, including

cost of his bond; per diem and travel of board of education; office expenses, cost of audit, elections and attorneys' fees and other necessary expenses of general control.

(2) Instructional Service.—Salaries of elementary and high school teachers and principals; salaries, travel, and office expense of supervisors; salaries and travel of teachers of vocational education including agriculture, home economics, trades and industries and distributive education; clerical and travel expenses of principals; commencement expenses; and instructional supplies.

(3) Operation of Plant.—Wages of janitors, cost of fuel, water, light, power, janitors' supplies, and telephones in school buildings.

(4) Maintenance of Plant.—Cost of repairs to buildings and grounds, including salary of the superintendent of grounds, and teacherages; repairs and replacements of furniture and instructional apparatus, and repairs and replacements of heating, electrical and plumbing equipment.

(5) Fixed Charges.—Cost of rents, insurance on buildings and equipment, workmen's compensation, compensation to injured employees, payment for injuries to school children, retirement paid to the State and paid to employees, and tort claims.

(6) Auxiliary Agencies.—Cost of transportation, including wages of drivers, gas, oil and grease; gas storage and equipment; salaries of mechanics, repair parts and batteries; tires and tubes; insurance, license and title fees; garage equipment, contract transportation, major replacements of chassis and bodies, and bus travel of principals; cost of operation and maintenance of school libraries; replacement and rental of textbooks including salaries of clerical assistants; health, including clinics and recreation; aid to indigent pupils; night schools; summer schools; adult education; lunchrooms; veterans' training; and interest on temporary loans.

(c) The capital outlay fund shall provide for the purchase of sites, the erection of all school buildings properly belonging to school plants, improvement of new school grounds, alteration and addition to buildings, purchase of furniture, equipment, trucks, automobiles, school buses, and other necessary items for the better operation and administration of the public schools in the following divisions:

(1) New Buildings and Grounds.—Estimated total cost of new buildings including grounds, heating, plumbing and electrical equipment, furniture and instructional apparatus, architect and engineering fees, and other costs; provided, the estimated cost of the site shall be included in the total estimated cost of the building but not as a separate item; provided further, that no contract for the purchase of the site shall be executed nor any funds expended therefor without the approval of the board of county commissioners as to the amount to be spent for the site; and in case of a disagreement between a board of education and a board of county commissioners as to the amount to be spent for the site, the procedure provided in G.S. 115-87 shall, insofar as the same may be applicable, be used to settle the disagreement.

(2) Old Buildings and Grounds.—Cost of additional sites and improvement of grounds, alterations and additions to existing buildings, installing new heating, electrical or plumbing systems, and adding additional furniture and instructional apparatus.

(3) Auxiliary Agencies.—Cost of new library and textbooks, new school buses operated for first time as an addition to fleet, activity buses, garage building and equipment, new and additional equipment for the superintendent's office, and interest on temporary loans for capital outlay fund.

(d) The debt service fund shall provide for the payment of principal and interest on indebtedness incurred for school purposes, as such principal and interest fall due, and the payment of moneys required to be paid into sinking funds. The term "indebtedness," as used in this article, includes bonds, notes and State loans, including, in the case of the county debt service fund, indebtedness assumed by the county as well as indebtedness incurred by the county. Where the indebtedness for school purposes of any city, town, school district, school taxing district, township, city administrative unit or other political subdivision in a county (hereinafter referred to in this article as "local district") has not been assumed by the county, the county debt service fund shall provide for payment, apportioned on a per capita basis as provided in subsection (d) of G.S. 115-80, of principal and interest on indebtedness of local districts, as such principal and interest fall due, and for payment of moneys required to be paid into sinking funds of local districts.

(e) Other objects of expenditure, including educational television, may be included in the school budget when authorized by the General Assembly, the State Board of Education, or county and city boards of education, when funds for the same are made available. (1955, c. 1372, art. 9, s. 1; 1957, c. 1220; 1959, c. 573, ss. 5, 6; 1963, c. 1223, s. 3.)

Local Modification.—Jones: 1955, c. 564.

Editor's Note. — The 1963 amendment substituted "counselor" for "officer" near the beginning of subdivision (1) of subsection (b).

As to former statute, see Onslow County Bd. of Educ., v. Onslow County Bd. of Comm'rs, 240 N.C. 118, 81 S.E.2d 256 (1954).

§ 115-79. Objects of expenditure included in State budget.—The appropriation of State funds, as provided by law, shall be used for meeting the cost of the operation of the public schools as determined by the State Board of Education, for the following items:

(1) General control:
    a. Salary of superintendent.
    b. Travel of superintendent.
    c. Salaries of clerical assistants.
    d. Salaries of property and cost clerks.
    e. Office expenses.
    f. Per diem and travel of county board of education.
    g. Salaries of attendance counselors.
(2) Instructional service:
    a. Salaries of elementary and high school teachers.
    b. Salaries of elementary and high school principals.
    c. Salaries of supervisors.
    d. Instructional supplies.
(3) Operation of plant:
    a. Wages of janitors.
    b. Fuel.
    c. Water, light, and power.
    d. Janitor's supplies.
    e. Telephones.
(4) Fixed charges, compensation:
    a. School employees.
    b. Injuries to school pupils.
    c. Tort claims.
(5) Auxiliary agencies:
    a. Transportation of pupils:
        1. Wages of bus drivers.
        2. Gas, oil and grease.
        3. Gas storage equipment.
        4. Salaries of mechanics.
        5. Repair parts and batteries.

6. Tires and tubes.
7. License and title fees.
8. Garage equipment.
9. Contract transportation.
10. Major replacements of chassis and bodies.
11. Principals' bus travel.

b. Libraries: Supplies, repairs and replacements.
c. Child health program.

In making provision from State funds, the State Board of Education shall effect all economies possible in providing for all objects and items of expenditure except items of salary, and after such economies in all nonsalary items, the Board shall have authority to increase or decrease on a uniform percentage basis, the salary schedule of all personnel employed in order that the appropriation of State funds for the public schools may insure their operation for the full length of the term. (1955, c. 1372, art. 9, s. 2; 1963, c. 1223, s. 4.)

Editor's Note. — The 1963 amendment added paragraph g to subdivision (1).

As to former statute, see Onslow County Bd. of Educ. v. Onslow County Bd. of Comm'rs, 240 N.C. 118, 81 S.E.2d 256 (1954).

§ **115-80. Rules for preparation of school budgets.**—(a) County-Wide Current Expense Fund Budget.—County and city boards of education shall file with the appropriate tax levying authorities on or before the fifteenth day of June, on forms provided by the State Board of Education, all budgets requesting funds to operate the public schools, whether such funds are to be provided by the State or from local sources. There shall be no funds allotted for providing instruction to pupils for a term of more than one hundred eighty days either from State or local sources.

The county-wide current expense fund shall include all funds for current expenses levied by the board of county commissioners in any county to cover items for current expense purposes, and also all fines, forfeitures, penalties, poll and dog taxes, nontax funds, or any other funds, to be expended in the current expense budget and funds for vocational subjects, except those funds appropriated for such unit in the State budget.

In the preparation of the several school budgets, it shall be the first duty of county and city boards of education and the board of county commissioners to provide adequate funds for the items of expenditure included under maintenance of plant and the items under fixed charges not provided from State funds in order to protect and preserve the investment of the administrative units in the school plants.

When funds accruing by law to the board of education are not sufficient to repair, maintain and insure properly the school plants of an administrative unit, it shall be the duty of the board of county commissioners in which such unit is located to supplement these funds by a tax levy and said board is so directed and authorized.

In the event that county and city boards of education can by economy in management properly maintain, for use at all times, the school plants for a less amount than is placed to the credit of the school fund by law, it shall be in the discretion of such board of education with the approval of the board of county commissioners to use such excess to supplement any item of expenditure in its current expense fund.

When necessity is shown by county or city boards of education, or peculiar local conditions demand, for adding or supplementing items of expenditure not in the current expense fund provided by the State, the board of county commissioners may approve or disapprove, in part or in whole, any such proposed and requested expenditure. For those items it approves, it shall make a sufficient tax levy to provide the funds: Provided, that nothing in this chapter shall prevent the use of federal or privately donated funds which may be made available for the operation of the public schools under such regulations as the State Board of Education may prescribe.

(b) Supplemental Tax Budget.—In cases where administrative units or districts have voted, or may hereafter vote, a tax in order to operate schools of a higher standard than that provided by State support, county and city boards of education, at the same time the other budgets are filed, shall file a supplemental budget therefor and request that a sufficient levy be made by the tax levying authorities, not in excess of the rate voted by the people in such unit or district. The tax levying authorities may approve or disapprove this supplemental budget in whole or in part, and shall levy such taxes as necessary to provide for the approved budget for supplemental purposes, not exceeding the amount of the tax levy authorized by the vote of the people. The expenditure of the proceeds of said levy shall be in accordance with the aforesaid supplemental budget as approved by the tax levying authorities, except where such levy is voted in a district, in which case the written consent of the chairman of the district committee shall also be obtained before any of said proceeds are expended except in administrative districts: Provided, that the tax levying authorities may fix a charge against any administrative unit or district for collection of such levies not exceeding one percent (1%) thereof.

(c) Capital Outlay Budget.—In the same manner and at the same time each county and city administrative unit may file with the board of county commissioners a capital outlay budget, subject to the approval of the said board.

(d) Debt Service Budget.—In the same manner and at the same time the county board of education shall file a budget for the school debt service fund of the county, and a budget for the debt service fund of each local district, the indebtedness of which has not been assumed by the county and when the payment of the principal and interest of such indebtedness is required to be provided for by taxes levied by the board of county commissioners. In like manner and at the same time the board of education of each city administrative unit, when such unit has outstanding indebtedness and the payment of principal and interest of such indebtedness is required to be provided for by taxes levied by a board or body other than the board of county commissioners, shall file a budget for the debt service fund of such unit. The budget for the debt service fund of the county shall include (i) the principal and interest on indebtedness of the county and assumed by the county falling due in the fiscal year for which the budget is prepared, (ii) the installment payable in such fiscal year to a sinking fund for county indebtedness and (iii) a per capita apportionment to each local district based upon (i) and (ii) above, exclusive of installments payable to a sinking fund for the retirement of funding and refunding bonds or notes and the interest on the same, and computed with the last enrollment of the county unit and of such local district certified to the county accountant or county auditor by the State Board of Education: Provided, the inclusion of such per capita apportionment shall not supersede an apportionment provided for in any public-local or private law pursuant to which the bonds of such local district were issued: Provided, further, such per capita apportionment shall not exceed the amount of principal and interest of the indebtedness of the local district falling due in the fiscal year for which the budget is prepared and the installment payable in such fiscal year to a sinking fund for the retirement of bonds of such local district. The budget of each local district shall include the principal and interest on the indebtedness of such local district falling due in the fiscal year for which the budget is prepared and the installment payable in such fiscal year to a sinking fund for the retirement of indebtedness of such local district.

The county accountant shall examine the county debt service budget and the debt service budget of each local district, shall determine their accuracy and make his recommendation to the tax levying authorities. Accordingly, such tax levying authorities shall levy the taxes necessary and sufficient to pay all items contained in each such budget.

(e) The board of education of any county or city administrative unit may include funds derived from local sources in its local operating budget for the purpose of establishing and maintaining summer schools. Such summer schools as may be established shall be administered by county and city boards of education and shall be conducted in accordance with standards developed by the State Superintendent of Public Instruction and approved by the State Board of Education. The standards so developed shall specify the requirements for an approved curriculum, the qualifications of the personnel, the length of the session, and the conditions under which students may be granted credit for courses pursued during a summer school. In determining the eligibility of students for admission to summer schools, boards of education shall be governed by the provisions of article 21 of this chapter. (1955, c. 1372, art. 9, s. 3; 1961, c. 894, s. 1; 1965, c. 584, s. 10.)

Editor's Note. — The 1965 amendment inserted "except in administrative districts" immediately preceding the proviso at the end of subsection (b).

Premiums for insurance of public school buildings is a necessary public expense of a county, and the incurring of liability therefor need not be submitted to the voters. Fuller v. Lockhart, 209 N.C. 61, 182 S.E. 733 (1935).

Applied in Whiteville City Administrative Unit v. Columbus County Bd. of County Comm'rs, 251 N.C. 826, 112 S.E.2d 539 (1960); Peacock v. County of Scotland, 262 N.C. 199, 136 S.E.2d 612 (1964).

§ 115-80.1. Establishment of capital reserve fund; appropriations; depositary.—(a) A capital outlay budget of any school administration unit within the county may contain an amount to be appropriated for payment into a special fund which shall be designated "................ County School Capital Reserve Fund," hereinafter referred to as "the reserve fund." Such amount, together with similar amounts which may be contained in subsequent capital outlay budgets of any such school administrative unit, shall be for the purpose of anticipating future needs for school capital outlay and for financing all or a part of the cost thereof: Provided, withdrawals from the reserve fund, as hereinafter provided, for the cost of needs in a particular school administrative unit shall be limited to the amount or the aggregate amounts contained in the approved capital outlay budget or budgets of the particular unit, together with a proportionate share of the net earnings from investment of the reserve fund.

(b) Upon approval of a capital outlay budget by the board of county commissioners, which budget contains such amounts so appropriated, the reserve fund shall be deemed to have been duly established. The reserve fund shall be maintained as a separate account from all other funds, and payments thereto or deposits therein shall be in such bank or trust company as the board of county commissioners may designate as depositary thereof. The board shall promptly designate such depositary upon establishment of the reserve fund, and all such deposits shall be secured as provided by G.S. 159-28 of the Local Government Act. (1959, c. 524.)

§ 115-80.2. Withdrawals from the reserve fund. — Each withdrawal from the reserve fund shall be authorized by order passed by the board of county commissioners and upon petition therefor as hereinafter provided. The board of education of any school administrative unit in the county may petition for a withdrawal, which petition shall be by resolution duly adopted by said board of education, and a certified copy of such resolution shall be transmitted to the board of county commissioners. The resolution shall set forth:

(1) A request to the board of county commissioners for the withdrawal;
(2) The amount of such withdrawal;
(3) A brief description of the needs and the name or location of the school or schools where such needs exist;
(4) A statement that the withdrawal is for the purpose of financing the cost of such needs either together with other funds available for the same,

specifying their amounts and source, or that there are no other funds available therefor, as the case may be; and

(5) A declaration that the fulfillment of such needs is necessary for the maintenance of the public school term as required by the Constitution and laws of North Carolina.

Upon receipt of the petition by the board of county commissioners, said board of commissioners may, in its discretion, pass an order authorizing the withdrawal either in conformity with the petition or with modification thereof or may decline to pass such order: Provided, said board of county commissioners shall not pass an order authorizing withdrawal of an amount in excess of the amount set forth in the petition or in excess of the amount in the reserve fund to the credit of the administrative unit requesting withdrawal. Each withdrawal so authorized shall be by check drawn on the depositary for an amount equal to the amount so authorized, which check shall be signed by the chairman of the board of county commissioners and by the county accountant and shall be deposited for disbursement in the same manner as other school capital outlay funds are disbursed. (1959, c. 524.)

§ **115-80.3. Investment of moneys in reserve fund.** — Pending their use for the purposes hereinbefore authorized, all or part of the moneys in the capital reserve fund may be invested in either bonds, notes, bills, or certificates of indebtedness of the United States of America; or in bonds or notes of any agency or instrumentality of the United States of America the payment of principal and interest of which is guaranteed by the United States of America; or in bonds or notes of the State of North Carolina; or in bonds of any county, city or town of North Carolina which have been approved by the local government commission for the purpose of such investment; or in shares of any building and loan association organized and licensed under the laws of this State, or in shares of any federal savings and loan association organized under the laws of the United States with its principal office in this State, to the extent that such investment is insured by the federal government or any agency thereof. The proceeds of the sale or realization of such investments and any interest received from such investments shall accrue to the capital reserve fund. (1959, c. 524.)

§ **115-80.4. Unlawful expenditure or withdrawal of reserve fund.** —It shall be unlawful to withdraw or expend, or to cause to be withdrawn or expended, all or any part of the capital reserve fund except as authorized by this article. (1959, c. 524.)

§ **115-80.5. Accounting for reserve fund.** — The county accountant shall keep accurate accounts of all receipts, disbursements and assets of the reserve fund and, at the close of each fiscal year and at such other times as the board of county commissioners may request, prepare and submit to said board a statement of receipts and disbursements and of the assets of the reserve fund. He shall annually, and within thirty days after the close of each fiscal year, furnish such statement to the board of education of each school administrative unit in the county. (1959, c. 524.)

§ **115-81. Tax levying authorities must report action on budgets.**— The tax levying authorities shall report to the administrative units filing budgets for local funds the action on said budgets on or before the tenth day of July of each year. (1955, c. 1372, art. 9, s. 4.)

§ **115-82. Copies of budgets to be filed with State Board of Education.** — Copies of all budgets must be filed with the State Board of Education. Copies of all school budgets for the current expense fund, the capital outlay fund and the debt service fund, after approval by local authorities as provided by this article, shall be filed with the State Board of Education. (1955, c. 1372, art. 9, s. 5.)

§ **115-83. Operating budget.**—It shall be the duty of the county and city boards of education, upon the receipt of the tentative allotment of State funds for operating the schools and the approval of all local funds budgets, including supplements to State funds for operating schools of a higher standard, funds for capital outlay and funds for debt service, to prepare an operating budget on forms provided by the State and file same with the State Superintendent of Public Instruction and the State Board of Education on or before the first day of October. Each operating budget shall be checked by the appropriate State school officials to ascertain if it is in accordance with the allotment of State funds and the approval of local funds; and when found to be in accordance with same, such budget shall be the total operating budget for said county or city administrative unit. (1955, c. 1372, art. 9, s. 6.)

§ **115-84. Provision for disbursement of State funds.**—The deposit of State funds in the State treasury to the credit of the county and city administrative units shall be made in monthly installments, at such time and in such a manner as may be practicable to meet the needs and necessities of the nine months school term in the various county and city administrative units: Provided, that prior to the crediting of any monthly installments, it shall be the duty of the county or city board of education to file with the controller of the State Board of Education a certified statement of all expenditures and of all salaries and other obligations that may be due and payable in the succeeding month, said statement to be filed on or before the first day of each month.

When it shall appear to the controller from said certified statement that any amounts are due and necessary to be paid, he shall draw a requisition on the Budget Bureau covering the same; and upon the receipt of notice from the State Treasurer showing the amount placed to their credit, the duly constituted authorities may issue State warrants in the amount so certified: Provided, that no funds shall be released for payment of salaries for administrative officers of county or city units if any reports required to be filed with the State school authorities are more than thirty days overdue. (1955, c. 1372, art. 9, s. 7.)

§ **115-85. Fidelity bonds.** — The State Board of Education shall, in its discretion, determine what State and local employees shall be required to give bonds for the protection of State school funds and for the faithful discharge of their duties as to such funds; and, in cases in which bonds are required, the State Board of Education is authorized to place the same and pay the premiums thereon.

Boards of education in each county and city administrative unit shall cause all persons authorized to draw or approve school checks or vouchers drawn on school funds, whether county, district, or special, and all persons who, as employees of such administrative units, are authorized or permitted to receive any school funds from whatever source, and all persons responsible for, or authorized to handle school property, to be bonded for the faithful discharge of their duties as to such school funds in such an amount as in the discretion of said county and city boards of education shall be deemed sufficient for the protection of said school funds or property with surety by some surety company authorized to do business in the State of North Carolina. The amount deemed necessary to cover the cost of such surety bond shall be included as an item in the current expense funds of the school budget of each school administrative unit and shall be paid from the funds provided therein; but nothing in this section shall prevent the governing authorities of the respective administrative units from prorating the cost of such bond between the funds protected. (1955, c. 1372, art. 9, s. 8; 1959, c. 573, s. 7.)

§ **115-86. Apportionment of local funds among administrative units.**—All county-wide current expense funds shall be apportioned to the administrative units of a county on a per capita enrollment basis which shall be determined by the State Board of Education and certified to each administrative unit.

County-wide capital outlay funds for the cost of new school sites, or addition to present school sites, new school buildings, new additional construction at existing buildings and equipment for such new buildings and for new additional construction shall be apportioned to the administrative units of a county on the basis of budgets approved by the board of county commissioners for each administrative unit and for the amounts and purposes approved by said board of commissioners. All other capital outlay school funds shall be apportioned to the administrative units of a county on the same per capita enrollment basis used for apportionment of current expense funds.

Upon the basis of a budget approval and upon receiving the certificate of per capita enrollment, the county auditor or accountant shall determine the proportion of all county-wide tax and nontax revenue and other funds accruing to the current expense, and capital outlay funds, which is apportionable to the county and city administrative units within a county. The proportion thereof allocable to each administrative unit in said county shall be set up to the credit of such administrative unit by the county auditor or accountant.

On the basis of such apportionment, it shall be the duty of the county treasurer, or other county official performing such duties, to remit all of such funds for current expense and capital outlay as they are collected promptly at the end of each month to each administrative unit within the county.

In the event that a greater amount is collected and paid to any administrative unit than is authorized to be spent in its approved budget for current expense, and capital outlay funds, the same shall remain an unencumbered balance to be credited to those funds in the following fiscal year, and shall not be spent, committed, or obligated, unless a supplemental budget is first approved by the board of education and the board of county commissioners.

Collections of all taxes and other revenues accruing to a debt service fund shall be deposited promptly to the credit of such fund in the manner provided by law. Apportionments to local districts contained in the budget for the county debt service fund shall be paid and credited to the debt service funds of the local districts in such manner as may be practicable so as to provide for prompt payment of items of principal and interest therein, as the same fall due.

Funds derived from payments on insurance losses shall be used in the repair or replacement of buildings damaged or destroyed or, in the event the buildings are not replaced, shall be used to reduce the school indebtedness of the county or of the local district to which said payment has been made, or for other capital outlay purposes within said county or local district. (1955, c. 1372, art. 9, s. 9; 1959, c. 915, s. 3; 1961, c. 1199; 1963, c. 448, s. 24.)

Editor's Note. — The 1963 amendment deleted at the end of the first and second paragraphs provisions relating to industrial education centers.

Apportionment of County-Wide Taxes. —The principle upon which county-wide taxes were apportioned under the earlier law was fundamentally just and was preserved in the School Machinery Act of 1939. Board of School Trustees v. Benner, 222 N.C. 566, 24 S.E.2d 259 (1943).

§ 115-87. Procedure in cases of disagreement or refusal of tax levying authorities to levy taxes.—In the event of a disagreement between the county or city boards of education and the tax levying authorities as to the amount of the current expense fund, the capital outlay fund, and the debt service fund, or any item of either fund, the chairman of the county or city board of education and the presiding officer of the tax levying authorities shall arrange for a joint meeting of said boards within one week of the disagreement. At such joint meeting, the budget or budgets over which there is disagreement shall be gone over carefully and judiciously item by item. If agreement cannot be reached in this manner, the board of education whose budget is in question and the tax levying authorities shall each have one vote on the question of the adoption of these amounts in the budget. A majority of the members of each board shall cast the vote for each board.

In the event of a tie, the clerk of the superior court shall act as arbitrator upon the issues arising between such boards and he shall render his decision thereon within five days, but either the board of education or the tax levying authorities shall have the right to appeal to the superior court within ten days from the date of the decision of the clerk of the superior court, and it shall be the duty of the judge hearing the case on appeal to find the facts as to the amount of the current expense fund, the capital outlay fund, and the debt service fund, which findings shall be conclusive and he shall give judgment requiring the tax levying authorities to levy the tax which will provide the amount of the current expense fund, the capital outlay fund, and the debt service fund, which he finds necessary to maintain the schools in the administrative unit. In case of an appeal to the Supreme Court which would result in a delay beyond a reasonable limit for levying the taxes for the year, the judge shall order the tax levying authorities to levy for the ensuing year a rate sufficient to pay the debt service fund, and to produce, together with what may be received from the nine months' school fund and from other sources, an amount for the current expense fund and the prorated part of capital outlay fund equal to the amount of these funds for the previous year. Also, in case of an appeal, all papers and records relating to the case shall be considered a part of the record for consideration by the court.

The tax levying authorities shall forthwith levy the taxes according to the judgment rendered and upon refusal to do so, the members of said authority shall be in contempt and may be punished accordingly. (1955, c. 1372, art. 9, s. 10.)

Local Modification.—Madison: 1957, c. 627.

History Leading to Enactment of Section.—See Whiteville City Administrative Unit v. Columbus County Bd. of County Comm'rs, 251 N.C. 826, 112 S.E.2d 539 (1960).

Controversy Must Be Resolved Prior to Provision of Funds.—When disagreement arises, the county commissioners cannot be required to provide funds beyond their estimate of needs until the controversy has been resolved in the manner provided by statute. Whiteville City Administrative Unit v. Columbus County Bd. of County Comm'rs, 251 N.C. 826, 112 S.E.2d 539 (1960).

Decisions under Former Statutes.—As to constitutionality of former provisions, see Board of Educ. v. Board of Comm'rs, 174 N.C. 469, 93 S.E. 1001 (1917); Board of Educ. v. Board of Comm'rs, 182 N.C. 571, 109 S.E. 630 (1921); In re Board of Educ., 187 N.C. 710, 122 S.E. 766 (1924). As to necessity for meeting or arbitration by clerk, see Rollins v. Rogers, 204 N.C. 308, 168 S.E. 206 (1933).

Applied in Onslow County Bd. of Educ. v. Onslow County Bd. of Comm'rs, 240 N.C. 118, 81 S.E.2d 256 (1954).

§ 115-88. Jury trial as to amount needed to maintain schools.—The tax levying authorities or boards of education shall have the right to have the issues tried by a jury, as to the amount of the current expense fund and the capital outlay fund, which jury trial shall be set at the first succeeding term of the superior court, and shall have precedence over all other business of the court. Provided, that if the judge holding the court shall certify to the Chief Justice of the Supreme Court, either before or during such term, that on account of the accumulation of other business, the public interest will be best served by not trying such action at said term, the Chief Justice shall immediately call a special term of the superior court for said county, to convene as early as possible, and assign a judge of the superior court or an emergency judge to hold the same, and the said action shall be tried at such term. There shall be submitted to the jury for its determination the issue as to what amount is needed to maintain the schools, and they shall take into consideration the amount needed and the amount available from all sources as provided by law. The final judgment rendered in such action shall be conclusive, and the tax levying authorities shall forthwith levy taxes in accordance with such judgment; otherwise those who refuse so to do shall be in contempt, and may be punishable accordingly: Provided, that in case of a mistrial or an appeal to the Supreme Court which would result in a delay beyond a reasonable limit for levying the taxes for the year, the judge shall order the tax levying authorities to levy for the ensuing year a rate sufficient to pay the debt service fund, and to produce, together with what may be received from the State public school fund and from other sources, an amount for the current expense fund equal to the amount of this fund for the previous year. (1955, c. 1372, art. 9, s. 11.)

History Leading to Enactment of Section.—See Whiteville City Administrative Unit v. Columbus County Bd. of Comm'rs, 251 N.C. 826, 112 S.E.2d 539 (1960).

Applied in Onslow County Bd. of Educ. v. Onslow County Bd. of Comm'rs, 240 N.C. 118, 81 S.E.2d 256 (1954).

§ **115-89. Operation of county and city school budget.**—(a) Duty of County and City Boards of Education.—It shall be the duty of the county and city boards of education to pay all obligations incurred in the operation of the public schools promptly and when due, and to this end said boards of education shall inform the tax levying authorities from month to month of any anticipated expenditures which will exceed the current collection of taxes and such balance as may be on hand, if any, for the payment of said obligations in order that the tax levying authorities may make provisions for the funds to be available: Provided, that if a county or city board of education shall wilfully create a debt that shall in any way cause the expense of the year to exceed the amount authorized in the budget, without the approval of the tax levying authorities, the indebtedness shall not be a valid obligation of the administrative unit and the members of the board responsible for making the debt may be held liable for the same.

(b) Duty of Tax Levying Authorities.—It shall be the duty of the tax levying authorities to provide, when and as needed, the funds to meet the monthly expenditures, including salaries and other necessary operating expenses, as set forth in a statement prepared by the county or city boards of education and which expenditures are in accordance with the approved budget. If the collection of taxes does not yield sufficient revenue for this purpose, it shall be the duty of the tax levying authorities to borrow against the amount approved in the budget and to issue short term notes for the amount so borrowed in accordance with the provisions of "The County Finance Act" and "The Local Government Act." The interest on all such notes shall be provided by the tax levying authorities in addition to the amount approved in the budget, unless this item is specifically taken care of in the budget. (1955, c. 1372, art. 9, s. 12.)

§ **115-90. How school funds are paid out.**—The school funds shall be paid out as follows:

(1) State School Funds.—All State school funds shall be released only on warrants drawn on the State Treasurer, signed by the chairman and the secretary of the county board of education for county administrative units, and by the chairman and the secretary of the city board of education for city administrative units.

(2) County, City, and District School Funds.—All county, city, and district school funds, from whatever source provided, shall be paid out only on warrants signed by the chairman and the secretary of the county board of education for county units and the chairman and the secretary of the city board of education for city administrative units. In county administrative units such warrants shall be countersigned by such officer as the county government laws may require, or by some other officer or employee of the county, or of the county board of education, designated from time to time by the board of county

commissioners with the approval of the county board of education, and in city administrative units such warrants shall be countersigned by the treasurer of the administrative unit: Provided, the countersigning officer shall countersign warrants drawn as herein specified when such warrants are within the funds set up to the credit of, and are within the budget amounts appropriated for the particular administrative unit, and further, when each warrant is accompanied by an invoice, statement, voucher or other basic document which, upon examination by the countersigning officer, satisfies such countersigning officer that issuance of such warrant is proper: Provided, further, that in county units before the chairman and secretary of the board of education shall draw a voucher on funds belonging to a local tax district, they shall have an order signed by the chairman of the committee of such district authorizing the expenditure of such funds, except in the case of administrative districts. All vouchers which are chargeable against district funds shall specify the district against which they are charged.

(3) When Signatures of Chairman and Secretary May Be Affixed by Machine.—The signature of the chairman and the secretary of county and city boards of education required by this section on school warrants may be affixed to such warrants by signature machines. When such machines are used on warrants drawn on the State Treasurer, the same may be used only in accordance with such rules and regulations as may be prescribed by the State Board of Education with the approval of the State Treasurer. The use of such signature machines shall not be employed in any county or city administrative unit until the governing board thereof has adopted a resolution authorizing the use of same and accepting the full responsibility for any nonauthorized or improper use of such machines. In all cases where such signature machines are used, the secretary to the county board of education and the surety on his bond, or the secretary to the city board of education and the surety on his bond, shall be liable for any illegal, improper, or unauthorized use of such machines.

(4) Special Funds of Individual Schools.—County and city boards of education shall, unless otherwise provided for by law, designate the bank, depository, or trust company authorized to do business in North Carolina, in which all special funds of each individual school shall be deposited. Such funds shall be paid out only on checks signed by the principal of the school and the treasurer who has been selected by the respective boards of education: Provided, that the schools handling less than three hundred dollars ($300.00) in any school year may not be required, in the discretion of the boards of the respective units, to follow this procedure for depositing and disbursing funds.

In all schools a complete record shall be kept by the treasurer and reports made of all the money received and disbursed by him in handling funds of the school: Provided, that nothing in this section shall prevent the depositing of all these special funds with the treasurer of the county or city administrative units and the disbursing of said funds upon the signatures of the chairman and secretary of the respective boards of education.

(5) Records and Reports.—The State Superintendent of Public Instruction and the State Board of Education shall have full power and authority to make rules and regulations prescribing the manner in which records shall be kept by all county and city administrative units as to the expenditure of the current expense funds, the capital outlay funds and the debt service funds derived from local sources, and for making re-

ports thereof to the State Superintendent of Public Instruction. (1955, c. 1372, art. 9, s. 13; 1959, c. 573, s. 8; 1965, c. 488, s. 1; c. 584, s. 11.)

Local Modification. — Duplin County: 1965, c. 961, s. 1; Moore: 1959, c. 977, s. 2; Rowan, as to subdivision (2): 1955, c. 419.

Editor's Note.—The first 1965 amendment inserted, near the beginning of the second sentence of subdivision (2), "or by some other officer or employee of the county, or of the county board of education, designated from time to time by the board of county commissioners with the approval of the county board of education."

The second 1965 amendment added the last sentence in subdivision (2) and added "except in the case of administrative districts" at the end of the next to the last sentence.

ARTICLE 10.

The Treasurer; His Powers, Duties and Responsibilities in Disbursing School Funds.

§ **115-91. Treasurer of school funds.**—(a) County School Administrative Unit.—The county treasurer of each county shall be the treasurer of all county school funds and school district funds of the county school administrative unit. He shall receive and disburse all such school funds and shall keep such funds separate and distinct from all other funds.

Before entering upon the duties of his office, the county treasurer shall furnish bond in some surety company authorized to do business in North Carolina in an amount to be fixed by the board of county commissioners, which bond shall be a separate bond, not including liability for other funds, and shall be conditioned for the faithful performance of his duties as treasurer of the county school funds and district school funds of the county administrative unit, and for the payment to his successor in office of any unexpended balance of school moneys which may be in his hands. The board of county commissioners may from time to time, if necessary, require the county treasurer to increase the amount of his bond or furnish additional security.

In all counties in which the office of county treasurer has been abolished as authorized by G.S. 155-3, or when by any other law a bank or trust company has been substituted therefor such bank or trust company shall act as treasurer and depository of all county school funds and district school funds: Provided, however, that such bank or trust company acting as treasurer of county school funds and district school funds shall not be required to maintain the system of bookkeeping and accounting imposed upon the county treasurer by G.S. 155-7, but the duty and responsibility of keeping and maintaining the accounting system as to county and district schools shall be the duty and responsibility of the county accountant or county auditor serving as such under the provisions of G.S. 153-115; provided, further, that nothing contained in this section shall relieve the superintendent of any county administrative unit from maintaining such accounting system and furnishing such reports as are now or may hereinafter be imposed upon him by law.

(b) City School Administrative Unit.—Unless otherwise provided by law, the board of education of a city administrative unit shall appoint a treasurer of all the school funds of such unit. The treasurer so appointed shall continue to fill such position at the will of the board of education of such unit. No person authorized to make the expenditures or draw vouchers therefor, or to approve the same, shall act as treasurer of such funds.

Before entering upon the duties of his office, the treasurer of a city administrative unit shall file with the board of education a good and sufficient bond with surety by some surety company authorized to do business in North Carolina in an amount to be fixd by the board of education of such administrative unit, which shall be a separate bond, not including liability for any other funds, and shall be conditioned for the faithful performance of the duties of treasurer of the city administrative unit school funds and for the proper accounting for all such funds as may come into his possession by virtue of his office as treasurer and for payment to his successor in office of any unexpended balance of school moneys which may be in his hands. The board of education may from time to time, if necessary, require him to increase the amount of his bond, or furnish additional security.

The treasurer of city administrative unit school funds is hereby required to maintain and keep, with respect to said funds, like records and accounts and make such reports with respect to said funds as herein provided to be made, kept, and maintained by the treasurer of county and district school funds of county administrative units.

(c) Special Funds of Individual Schools.—The county board of education of all county administrative units and the board of education of all city administrative units shall, by proper resolution duly recorded, appoint a treasurer of all special school funds for each school in the respective administrative unit. In all individual schools, a complete record shall be kept by the treasurer so appointed and reports made of all money received and from what source and of all money disbursed and for what purpose: Provided, however, that nothing in this subsection (c) shall prevent the handling of these special school funds under subsection (a) or subsection (b) of this section. The treasurer of all special funds and the principal of each school shall make a monthly report and such other reports as may be required to the superintendent of the administrative unit wherein such individual school is located, showing the status of each special school fund, upon forms to be supplied for that purpose. (1955, c. 1372, art. 10, s. 1; 1957, c. 365.)

Local Modification. — Guilford: 1955, c. 671.

Legislature May Change Custodian of Fund.—Ordinarily the county treasurer is the proper custodian of all sinking fund securities, including school sinking funds and securities held for the retirement of term bonds where the county has assumed the payment of such bonds, but the General Assembly may designate or change the custodian of sinking fund securities. Johnson v. Marrow, 228 N.C. 58, 44 S.E.2d 468 (1947).

§ 115-92. Action against treasurer to recover funds.—If it shall appear that any part of the public school funds received by the county treasurer, or person or depository acting as treasurer, or the treasurer of a city administrative unit, has not been properly applied to the credit of the county or city board of education, as the case may be, such board or boards of education shall bring action on the bond of such official or depository to recover such part of the funds as has not been so applied to such board or boards of education. In the event such board does not bring appropriate action against the treasurer, or person or depository acting as treasurer, the tax levying authorities shall bring action in the name of the State for any breach of the bond of the treasurer of any school funds for any failure to account properly for the funds received by him. If the tax levying authorities shall fail to bring such action, it may be brought in the name of the State upon the relation of any taxpayer. (1955, c. 1372, art. 10, s. 2.)

§ 115-93. Annual reports of treasurer.—The treasurer of every county and city board of education shall report to the State Superintendent of Public Instruction on the first Monday of August of each year the entire amount of money received and disbursed by him during the preceding fiscal year. Such reports shall be made on blanks furnished by the State Superintendent and all information called for on such blanks shall be furnished in detail and by item as may be requested on said report.

On the same date that the treasurer reports to the State Superintendent, he shall file a duplicate of such report in the office of the county or city board of education, as the case may be. Likewise, the treasurer of every county or city school fund shall make such other reports as the board of education may from time to time require.

The treasurer of every school fund shall, when required by the county or city board of education, produce his books and vouchers for examination and shall also exhibit all moneys due the public school fund. (1955, c. 1372, art. 10, s. 3.)

Discretionary Power Not Given to Superintendent. — The Supreme Court does not construe this section as giving to the State Superintendent of Public Instruction any discretionary power in connection with ascertaining the average current expense expenditures per student from local funds throughout the State. It is a matter of tabulating and certifying to the local units the facts as found from the reports submitted to him by the local units. Peacock v. County of Scotland, 262 N.C. 199, 136 S.E.2d 612 (1964).

§ **115-94. Duties of treasurer on expiration of his term.**—Each treasurer of public school funds, in going out of office, shall deposit in the office of the board of education of the administrative unit of which he is treasurer his books in which are kept his school accounts and all records and blanks pertaining to his office. He shall at the time he goes out of office, file with the board of education and with his successor, a report, itemized as required by law, covering the receipts and disbursements for that part of the fiscal school year from the thirtieth of June preceding to the time at which he turns over his office to his successor, and his successor shall include in his report to the State Superintendent of Public Instruction and to the superintendent of the administrative unit the receipts and disbursements for the current fiscal year as a whole. (1955, c. 1372, art. 10, s. 4.)

§ **115-95. Penalty for failure to report and to perform other duties.**—If any treasurer of the county or city administrative unit school fund shall fail to make reports required of him at the time and in the manner prescribed, or fail to perform any other duties required of him by law, he shall be guilty of a misdemeanor and be fined or imprisoned in the discretion of the court. (1955, c. 1372, art. 10, s. 5.)

§ **115-96. Speculating in teachers' salary vouchers.**—If any clerk, sheriff, register of deeds, county treasurer or other county, city, town or State officer shall engage in the purchasing of the salary voucher of any of the school personnel at a less price than its full and true value or at any rate of discount thereon, or be interested in any speculation thereon, he shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned and shall be liable to removal from office at the discretion of the court. (1955, c. 1372, art. 10, s. 6.)

§ **115-97. Audit of school funds.**—(a) Generally.—All school funds shall be audited and reports made for each fiscal year.

(b) State School Funds.—The State Board of Education, in cooperation with the State Auditor, shall cause to be made an annual audit of the State school funds disbursed by county and city administrative units and such additional audits as may be deemed necessary.

(c) County and City Administrative Units and District School Funds.—County and city boards of education shall cause to be made an annual audit of all county, city, and district school funds including the records and accounts of the boards of education and those of their respective treasurers, and the school boards shall provide for the payment of the cost thereof in the school budgets of the respective administrative units.

The auditor's report shall show:

(1) Sources of revenue and purposes for which expenditures were made;
(2) Comparison of approved school budget with the actual transactions;
(3) Statement of outstanding indebtedness, including county school bonds, amounts due the county or city board of education, and all unpaid accounts;

(4) Appraisal of all school property; and

(5) Such other items as may be prescribed by the county or city boards of education and the Local Government Commission and which will aid in making a complete audit.

The annual audits shall be completed as near to the close of the year as practicable and copies of said audit shall be filed with the chairman of the board of education, the superintendent of schools, the county auditor, the State Board of Education, the director of the Local Government Commission and the State Superintendent of Public Instruction not later than October the first after the close of the fiscal year on June the thirtieth. By October the first after the close of the fiscal year, a summary statement of the report on the audit shall be published in some newspaper published in the county, or posted at the courthouse door if no newspaper is published in such county.

(d) Special Funds of Individual Schools.—County and city boards of education shall cause to be made, at the same time the audit of the county or city funds is made, an audit of the special school funds of each school in the respective administrative units. Such annual audits shall be completed as near the close of the year as practicable and copies of each audit shall be filed with the chairman of the board of education and the superintendent of schools of the administrative unit in which the school is located and the State Board of Education not later than October the first after the close of the fiscal year on June the thirtieth.

(e) Payment of Audit Cost.—County and city boards of education shall include in the school budgets of the respective administrative units funds for the payment of the costs of the audits of county, city, district, and special funds of individual schools as required under subsections (c) and (d) of this section: Provided, that nothing in this section shall prevent the respective boards from prorating the cost of auditing of special funds to the special funds of each school. (1955, c. 1372, art. 10, s. 7.)

§ **115-98. Fines, forfeitures and penalties.**—It shall be the duty of every public officer, including clerks of the several courts and all justices of the peace, as well as all others in any way related or connected with the assessing, collecting and handling of any of those funds mentioned in the Constitution, Article IX, § 5, which shall belong to and remain in the several counties and which shall be faithfully appropriated for establishing and maintaining the free public schools:

(1) To keep in a proper record book supplied by the county an itemized, detailed statement of the respective amounts received by him in the way of fines, penalties, amercements and forfeitures.

(2) To account for and pay to the county treasurer all of said funds received by him within thirty days after the receipt thereof, to the end that all of said funds may be faithfully appropriated by the county board of education for the purposes mentioned in the Constitution.

(3) To enter immediately upon the docket or record book all of said funds which are assessed, and which shall not be remitted except for good and sufficient reasons, which reasons shall be stated on the docket and at all times be open to public inspection.

(4) Any officer, including justices of the peace, violating any of the provisions of this section, shall be guilty of a misdemeanor and upon conviction shall be punished by fine or imprisonment at the discretion of the court. (1955, c. 1372, art. 10, s. 8.)

Local Modification. — Brunswick, as to former statute: 1955, c. 336.

§ **115-99. Unclaimed fees of jurors and witnesses paid to school fund.**—All moneys due jurors and witnesses which remain unclaimed in the hands of any clerk of the superior court or of the clerk of any inferior court for more than one year shall be paid over to the county treasurer by the clerk of said court, on the first day of January, of each year, for the use of the public schools. All such moneys shall be used as other public school revenue. (1955, c. 1372, art. 10, s. 9.)

Cross Reference.—For section providing for like disposition of such unclaimed fees after three years, see § 2-50.

§ **115-100. Miscellaneous funds.**—It shall be the duty of the county superintendent of schools at least once a year and as directed by the county board of education to examine the records of the county to see that the proceeds from the poll taxes and the dog taxes where applicable are correctly accounted for to the school fund each year; he shall likewise examine the records of the several courts of the county, including justices of the peace, and their reports filed with the clerk of the superior court, to see that all fines, forfeitures, and penalties, and any other special funds accruing to the county school fund are correctly and promptly accounted for to the school fund; and if the superintendent shall find that any such taxes or fines are not correctly and promptly accounted for to the school fund, it shall be the duty of the superintendent to make a prompt report thereof to the solicitor of the superior court in the district.

It shall be unlawful for any of the proceeds of fines, forfeitures, penalties and other funds accruing to the public school fund to be used for other than school purposes, and the official responsible for any diversion of such funds to other purposes shall be guilty of a misdemeanor and, upon conviction, shall be punishable by fine or imprisonment, in the discretion of the court. The clear proceeds of such funds shall be accounted for by the officers collecting the same, and no deductions shall be made therefrom for fees or commissions. Any court officer, including justices of the peace, who shall wilfully fail or refuse to account for all such funds coming into the hands of such officer, shall upon conviction thereof, be guilty of a felony and punished as provided by law in cases of embezzlement. (1955, c. 1372, art. 10, s. 10.)

Article 11.

Loans from State Literary Fund.

§ **115-101. Loans by State Board from State Literary Fund.** — The State Literary Fund includes all funds derived from the sources enumerated in § 4, Article IX, of the Constitution, and all funds that may be hereafter so derived, together with any interest that may accrue thereon. This Fund shall be separate and distinct from other funds of the State.

The State Board of Education, under such rules and regulations as it may deem advisable, not inconsistent with the provisions of this article, may make loans from the State Literary Fund to the counties for the use of county and city boards of education under such rules and regulations as it may adopt and according to law for the purpose of aiding in the erection and equipment of school plants. No warrant for the expenditure of money for such purposes shall be issued except upon the order of the State Superintendent of Public Instruction with the approval of the State Board of Education. (1955, c. 1372, art. 11, s. 1.)

Cross Reference. — As to authority to sell notes evidencing loans from State Literary Fund, see § 135-7.1.

Editor's Note.—For act validating notes evidencing loans from Literary Fund, see Session Laws 1945, c. 404.

§ **115-102. Terms of loans.**—Loans made under the provisions of this article shall be payable in ten installments, shall bear interest at a uniform rate determined by the State Board of Education not to exceed four per centum (4%), payable annually, and shall be evidenced by the note of the county, executed by the chairman, the clerk of the board of county commissioners, and the chairman and secretary of the county or city board of education, and deposited with the State Treasurer. The first installment of such loan, together with the interest on the whole amount then due, shall be paid by the county or city board on the tenth day of February after the tenth day of August subsequent to the making of such loan, and the remaining installments, together with the interest, shall be paid on the tenth day of February of each subsequent year until all shall have been paid. (1955, c. 1372, art. 11, s. 2.)

§ **115-103. How secured and paid.**—At the January meeting of the board of education, before any installment shall be due on the next tenth day of February, the county or city board of education shall set apart out of the school funds an amount sufficient to pay such installment and interest to be due, and shall issue its order upon the treasurer of the county or city school fund therefor, who, prior to the tenth day of February, shall pay over to the State Treasurer the amount then due. Upon failure of any administrative unit to pay any installment of principal or interest, or any part of either, when due, the State Treasurer, upon demand of the State Board of Education, shall bring action against the county or city board of education and board of county commissioners to compel the levy and collection of sufficient taxes to pay said installment of principal and accrued interest. The State Board of Education may accept payment of any or all of said notes and the interest accrued thereon before maturity. (1955, c. 1372, art. 11, s. 3.)

§ **115-104. Loans by county board to school districts.** — The county board of education, from any sum borrowed under the provisions of this article, may make loans only to districts that shall have levied a local tax sufficient to repay the installments and interest on said loan for the purpose of building schoolhouses in the district, and the amount so loaned to any district shall be payable in ten annual installments, with interest thereon at the same rate the county board of education is paying, payable annually. Any amount loaned under the provisions of this law shall be a lien upon the total local tax funds produced in the district. Whenever the local taxes may not be sufficient to pay the installments and the interest, the county board of education must supply the remainder out of the current expense fund, and shall make provision for the same when the county budget is made and presented to the commissioners.

All loans hereafter made to such districts shall be made upon the written petition of a majority of the committee of the district asking for the loan and authorizing the county board to deduct a sufficient amount from the local taxes to meet the indebtedness to the county board of education. Otherwise, the county board of education shall have no lien upon the local taxes for the repayment of this loan: Provided, this lien shall not lie against taxes collected or hereafter levied to pay interest and principal on bonds issued by or on behalf of the district. (1955, c. 1372, art. 11, s. 4.)

§ **115-105. State Board of Education authorized to accept funding or refunding bonds of counties for loans; approval by Local Government Commission.** — In any case where a loan has heretofore been made from the State Literary Fund or from any special building fund of the State to a county and such county has heretofore or shall hereafter authorize the issuance of bonds for the purpose of funding or refunding interest on or the principal of all or a part of the notes evidencing such loan, the State Board of Education is hereby authorized to accept funding or refunding bonds or notes of such county in payment of interest on or the principal of the notes evidencing such loan: Provided, however, that the issuance of such funding or refunding bonds shall have been approved by the Local Government Commission. (1955, c. 1372, art. 11, s. 5.)

§ **115-106. Issuance of bonds as part of general refunding plan.**—In any case where the funding or refunding of interest on or the principal of such notes shall constitute a part of a refunding plan or program of the county, and the terms of such funding or refunding shall be accepted by a sufficient number of the holders of the county's obligation to put same into effect, the State Board of Education may authorize the acceptance of such funding or refunding bonds or notes upon the same terms and conditions, both as to principal and interest, as have been agreed upon by a sufficient number of the other holders of the county's obligations to put same into effect. (1955, c. 1372, art. 11, s. 6.)

§ 115-107. Validating certain funding and refunding notes of counties.—The notes of any county held by the State Board of Education which were heretofore issued in exchange for and for the purpose of refunding and retiring notes evidencing loans made from the State Literary Fund pursuant to article twenty-four of chapter one hundred and thirty-six of the Public Laws of one thousand nine hundred and twenty-three, or from special building funds pursuant to either chapter one hundred and forty-seven of the Public Laws of one thousand nine hundred and twenty-one, or article twenty-five of chapter one hundred and thirty-six of the Public Laws of one thousand nine hundred and twenty-three, or chapter two hundred and one of the Public Laws of one thousand nine hundred and twenty-five, or chapter one hundred and ninety-nine of the Public Laws of one thousand nine hundred and twenty-seven, are hereby declared to be valid existing indebtedness of said county incurred by said county for the maintenance of the six-months' school term as required by the Constitution of North Carolina, notwithstanding any lack of authority for the issuance of said notes or error or omission or irregularity in the acts done or proceedings taken to provide for their issuance, and said notes held by the State Board of Education are hereby authorized to be refunded with bonds issued pursuant to the County Finance Act, being chapter eighty-one of the Public Laws of one thousand nine hundred and twenty-seven, as amended. (1955, c. 1372, art. 11, s. 7.)

§ 115-108. Special appropriation from fund. — The State Board of Education may annually set aside and use out of the funds accruing in interest to the State Literary Fund, a sum not exceeding seventeen thousand five hundred dollars ($17,500.00) to be used for giving directions in the preparation of proper plans for the erection of school buildings in providing inspection of such buildings as may be erected in whole, or in part, with money borrowed from said Fund, and such other purposes as said Board may determine to secure the erection of a better type of school building and better administration of said Fund. (1955, c. 1372, art. 11, s. 8.)

§ 115-108.1. Loans not granted in accordance with § 115-101.—The State Board of Education, under such rules and regulations as it may adopt, may make loans from the State Literary Fund to any county or city board of education, when the State Board of Education finds as a fact that it is not practicable for a loan to be granted in accordance with the provisions of G.S. 115-101, for the purpose of aiding in the erection and equipment of public school plants. Such a loan shall not constitute a credit obligation of the county. No warrant for the expenditure of money for a loan authorized under the provisions of this section shall be issued except upon the approval of the State Board of Education, and after a finding of fact by said Board that it is not practicable for a loan to be granted in accordance with the provisions of G.S. 115-101 and that a dire emergency exists in the administrative unit applying for such loan. Loans made under the provisions of this section shall be made in accordance with the terms specified in G.S. 115-102 and shall be evidenced by the note of the county or city board of education, executed by the chairman and the secretary of said board. The first installment of such loan, together with the interest then due, shall be paid by the county or city board of education on or before the tenth day of June in the fiscal year following the fiscal year in which the loan was made, and succeeding installments, together with accrued interest, shall be paid one each on or before the tenth day of June of each successive fiscal year until all amounts due on said loan shall have been paid. The provisions of G.S. 115-103 shall not apply to loans made pursuant to the provisions of this section. (1959, c. 227; c. 764, s. 2.)

§ 115-108.2. Pledge of nontax revenues to repayment of loans from State Literary Fund.—Any county or city board of education obtaining a loan from the State Literary Fund under the provisions of G.S. 115-108.1 may, with the approval of the board of county commissioners, pledge to the repayment of such loan any available nontax revenues, including but not limited to, fines, penalties, and forfeitures. (1959, c. 764, s. 1.)

ARTICLE 12.

Assumption of School District Indebtedness by Counties.

§ 115-109. Method of assumption; validation of proceedings. — The county board of education, with the approval of the board of commissioners, and when the assumption of such indebtedness is approved at an election as hereinafter provided, if such election is required by the Constitution, may include in the debt service fund in the school budget all outstanding indebtedness for school purposes of every city, town, school district, school taxing district, township, city administrative unit or other political subdivision in the county (hereinafter collectively called "local districts"), lawfully incurred in erecting and equipping school buildings necessary for the school term. The election on the question of assuming such indebtedness shall be called and held in accordance with the provisions of article 9 of chapter 153 of the General Statutes, known as "The County Finance Act," insofar as the same may be made applicable, and the returns of such election shall be canvassed and a statement of the result thereof prepared, filed and published as provided in the County Finance Act. No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 30 days after the publication of such statement of result. When such indebtedness is taken over for payment by the county as a whole and the local districts are relieved of their annual payments, the county funds provided for such purpose shall be deducted from the debt service fund prior to the division of such fund among the schools of the county as provided in subsection (d) of § 115-80.

The assumption, as herein provided, by any county, at any time prior to the twenty-eighth day of February, one thousand nine hundred fifty-one, of the indebtedness of local districts for school purposes and all proceedings had in connection therewith are hereby in all respects ratified, approved, confirmed, and validated: Provided, that nothing herein shall prevent counties and local taxing districts from levying taxes to provide for the payment of their debt service requirements if they have not been otherwise provided for. (1955, c. 1372, art. 12, s. 1.)

Section Considered in Pari Materia with Special School Bond Act. — Where this section and a special school bond act (Session Laws 1957, c. 1078), deal with the same general subject, to wit: Assumption by counties of school district indebtedness, these statutory provisions must be regarded as in pari materia. It is presumed (1) that the earlier general act was known to the legislature when it enacted the later special act, and (2) that the later statute was enacted in the light of and in reference to the former general statute on the same subject. Strickland v. Franklin County, 248 N.C. 668, 104 S.E.2d 852 (1958).

§ 115-110. Taxes levied and collected for bonds assumed to be paid into school debt service fund of county; discharge of sinking fund custodian. — In any county where the bonds of a local district have been assumed under the provisions of this article, all taxes levied and collected for the purpose of paying the principal of and interest on said bonds, or for creating a sinking fund for the retirement of said bonds, shall be deposited in the school debt service fund of the county. The custodian of all moneys and other assets of a sinking fund created for the retirement of said bonds is hereby authorized to turn over such moneys and assets to the county treasurer, the county sinking fund commissioner or other county officer charged with the custodianship of sinking funds, and such custodian shall thereby, be discharged from further responsibility for administration of and accounting for such sinking fund. (1955, c. 1372, art. 12, s. 2.)

§ **115-111. Allocation to district bonds of taxes collected.** — The collections of taxes levied for debt service on all taxable property of a county in which local district bonds have been assumed shall be proportionately allocated to each issue of such bonds. (1955, c. 1372, art. 12, s. 3.)

Article 13.

Refunding and Funding Bonds of School Districts.

§ **115-112. "School district" defined.** — The term "school district," as used in this article shall be deemed to include any special school taxing district, local tax district, special charter district, city administrative unit or other political subdivision of a county by which or on behalf of which bonds have been issued for erecting and equipping school buildings, or for refunding the same, and such bonds are outstanding. (1955, c. 1372, art. 13, s. 1.)

§ **115-113. Continuance of district until bonds are paid.** — Notwithstanding the provisions of any law which affect the continued existence of a school district or the levy of taxes therein for the payment of its bonds, such school district shall continue in existence with its boundaries unchanged from those established at the time of issuance of its bonds, unless such boundaries shall have been extended and thereby embrace additional territory subject to the levy of such taxes, until all of its outstanding bonds, together with the interest thereon, shall be paid. (1955, c. 1372, art. 13, s. 2.)

§ **115-114. Funding and refunding of bonds authorized; issuance and sale or exchange; tax levy for repayment.**—The board of commissioners of the county in which any such school district is located is hereby authorized to issue bonds at one time or from time to time for the purpose of refunding or funding the principal or interest of any bonds of such school district then outstanding. Such refunding or funding bonds shall be issued in the name of the school district and they may be sold or delivered in exchange for or upon the extinguishment of the obligations or indebtedness refunded or funded. Except as otherwise provided in this article, such refunding and funding bonds shall be issued in accordance with the provisions of §§ 159-59 to 159-62 of the General Statutes and the Local Government Act, § 159-1 et seq. and acts amendatory thereof and supplemental thereto. The tax levying body or bodies authorized by law to levy taxes for the payment of the bonds, the principal or interest of which shall be refunded or funded, shall levy annually a special tax on all taxable property in such school district sufficient to pay the principal and interest of said refunding or funding bonds as the same become due. (1955, c. 1372, art. 13, s. 3.)

§ **115-115. Issuance of bonds by cities and towns; debt statement; tax levy for repayment.**—In case the governing body of any city or town is the body authorized by law to levy taxes for the payment of the bonds of such district, whether the territory embraced in such district lies wholly or partly within the corporate limits of such city or town, such governing body of such city or town is hereby authorized to issue bonds at the time or from time to time for the purpose of refunding or funding the principal or interest of any bonds then outstanding which were issued by or on behalf of such school district. Except as otherwise provided in this article, such refunding and funding bonds shall be issued in accordance with the provisions of the Municipal Finance Act, as amended, relating to the issuance of refunding and funding bonds under that act, and the provisions of the Local Government Act and acts amendatory thereof and supplemental thereto, except in the following respects:

(1) The bonds shall be issued in the name and on behalf of the school district by the governing body of such city or town.

(2) It shall not be necessary to include in the ordinance authorizing the bonds, or in the notice required to be published after the passage of the ordinance, any statement concerning the filing of a debt statement, and, as applied to said bonds, §§ 160-379 and 160-383 of the General Statutes (the Municipal Finance Act), as amended, shall be read and understood as if they contained no requirements in respect to such matters.

(3) The governing body of such city or town shall annually levy and collect a tax ad valorem upon all the taxable property in such school district sufficient to pay the principal and interest of such refunding or funding bonds as the same become due. (1955, c. 1372, art. 13, s. 4.)

SUBCHAPTER V. SPECIAL LOCAL TAX ELECTIONS FOR SCHOOL PURPOSES.

Article 14.

School Areas Authorized to Vote Local Taxes.

§ **115-116. Purposes for which elections may be called.**—(a) To Vote a Supplemental Tax.—Elections may be called to ascertain the will of the voters as to whether there shall be levied and collected a special tax in the several administrative units, districts, and other school areas, including districts formed from contiguous counties, to supplement the current expense funds from State and county allotments and hereby operate schools of a higher standard by supplementing any item of expenditure in the school budget. When supplementary funds are authorized by the carrying of such an election, such funds may be used to employ additional teachers, other than those allotted by the State, to teach any grades or subjects or for kindergarten instruction, to establish and maintain approved summer schools, and for making the contribution to the Teachers' and State Employees' Retirement System of North Carolina for such teachers, or for any object of expenditure: Provided, that elections may be called to ascertain the will of the voters of an entire county, as to whether there shall be levied and collected a special tax on all the taxable property within the county for the purposes enumerated in this subsection. In such event, the supplemental tax shall be apportioned among the administrative units of the county on a per capita enrollment basis which shall be determined by the State Board of Education and certified to each administrative unit involved.

(b) To Increase a Supplemental Tax Rate.—Elections may be called in any school area which has previously voted a supplemental tax of less than the maximum for the purpose of increasing the rate of tax previously voted but not to exceed the maximum.

(c) To Enlarge City Administrative Units.—Elections may be called in any district or districts, or other school area or areas, of a county administrative unit to ascertain the will of the voters in such district or districts or other school area or areas, as to whether an adjoining city administrative unit shall be enlarged by consolidating such district or districts, or other school area or areas, with such city administrative unit, and whether after such enlargement of the city administrative unit there shall be levied in such other district or districts, or other school area or areas, so consolidated with the city administrative unit the same school taxes as shall be levied in the other portion of the city administrative unit.

(d) To Supplement and Equalize Educational Advantages.—Elections may be called in any area of a county administrative unit which is enclosed in one common boundary line to ascertain the will of the voters as to whether there shall be levied and collected a special tax to supplement and equalize the standards on which the schools in such areas are operated, and at the same time repeal any special taxes heretofore voted by any part or parts of such area.

(e) To Abolish a Special School Tax.—Elections may be called in any administrative unit, district or other school area which has previously voted a supplemental tax, to ascertain the will of the people as to whether such tax shall be abolished.

(f) To Vote School Bonds.—Boards of county commissioners are authorized as provided by law to call elections to ascertain the will of the voters as to whether bonds for school purposes may be issued.

(g) To Provide a Supplemental Tax on a County-Wide Basis after Petition for Consolidation of City or County Administrative Units. — Elections may be called for an entire county on the question of a special tax to supplement the current expense funds from State and county allotments and thereby operate schools of a higher standard by supplementing any item of expenditure in the school budget, where the boards of education of all the city administrative units in said county have petitioned the county board of education for a consolidation with the county administrative unit, pursuant to the provisions of G.S. 115-74 and prior to the approval of said petitions by the county and State boards of education. In which event, and provided the petitions so specify, if said election for a county-wide supplemental tax fails to carry, said petitions may be withdrawn and any existing supplemental tax theretofore voted in any of the city administrative units involved or in the county administrative unit, shall not be affected. If the vote for the county-wide supplemental tax carries, said tax shall not be levied unless and until the consolidation of the units involved shall be completed according to the requirements of G.S. 115-74.

(h) To Annex or Consolidate Areas or Districts from Contiguous Counties and to Provide a Supplemental School Tax in Such Annexed Areas or Consolidated Districts.—An election may be called in any district or districts or other school area or areas, from contiguous counties, as to whether the district or districts, in one county shall be enlarged by annexing or consolidating therewith any adjoining district or districts, or other school area or areas from an adjoining county, and if a special or supplemental school tax is levied and collected in the district or districts of the county to which the territory is to be annexed or consolidated, whether upon such annexation or consolidation there shall be levied and collected in the territory to be annexed or consolidated the same special or supplemental tax for schools as is levied and collected in the district or districts in the other county. If such election carries, the said special or supplemental tax shall be levied and collected by the county wherein such territory lies and remitted to the county school fund of the county already levying and collecting such special or supplemental tax; provided, that notwithstanding the provisions of G.S. 115-12.1, if the notice of election clearly so states, and the election shall be held prior to August 1, the annexation or consolidation shall be effective and the tax so authorized shall be levied and collected beginning with the fiscal year commencing July 1 next preceding such election. (1955, c. 1372, art. 14, s. 1; 1957, c. 1066; c. 1271, s. 1; 1959, c. 573, s. 9; 1961, c. 894, s. 2; c. 1019, s. 1.)

Local Modification. — Brunswick, as to subsection (a) as affecting Southport School District: 1959, c. 600; Lincoln, as to subsection (g): 1959, c. 480, s. 1; Mecklenburg: 1959, c. 378, s. 22.

Cross Reference. — As to constitutional provision requiring election, see N.C. Const., Art. VII, § 7; and note thereto.

Decisions under Former Statutes.—As to local tax elections for schools, see Gill

v. Board of Comm'rs, 160 N.C. 176, 76 S.E. 203 (1912); Chitty v. Parker, 172 N.C. 126, 90 S.E. 17 (1916); Sparkman v. Board of Comm'rs, 187 N.C. 241, 121 S.E. 531 (1924); Forester v. North Wilkesboro, 206 N.C. 347, 174 S.E. 112 (1934); Freeman v. Charlotte, 206 N.C. 913, 174 S.E. 453 (1934); Evans v. Mecklenburg County, 205 N.C. 560, 172 S.E. 323 (1934); Onslow County Bd. of Educ. v. Onslow County Bd. of Comm'rs, 240 N.C. 118, 81 S.E.2d 256 (1954). As to elections on the question of enlarging local tax districts, see Perry v. Board of Comm'rs, 183 N.C. 387, 112 S.E. 6 (1922); Hicks v. Board of Educ., 183 N.C. 394, 112 S.E. 1 (1922); Barnes v. Board of Comm'rs, 184 N.C. 325, 114 S.E. 398 (1922); Board of Educ. v. Bray Bros. Co., 184 N.C. 484, 115 S.E. 47 (1922); Vann v. Board of Comm'rs, 185 N.C. 168, 116 S.E. 421 (1923); Plott v. Board of Comm'rs, 187 N.C. 125, 121 S.E. 190 (1924); Blue v. Board of Trustees, 187 N.C. 431, 122 S.E. 19 (1924); Jones v. Board of Educ., 187 N.C. 557, 122 S.E. 290 (1924); Carr v. Little, 188 N.C. 100, 123 S.E. 625 (1924).

Applied in Bridges v. Charlotte, 221 N.C. 472, 20 S.E.2d 825 (1942).

Quoted in Jordan v. Board of Comm'rs, 245 N.C. 290, 95 S.E.2d 884 (1957).

§ **115-117. Maximum rate and frequency of elections.** — In no event shall a tax for supplementing the current expense fund budget exceed fifty cents (50¢) on the one hundred dollars ($100.00) valuation of property, real and personal: Provided, that in any school administrative unit, district, or other school area having a total population of not less than one hundred thousand (100,000) said local annual tax that may be levied shall not exceed sixty cents (60¢) on one hundred dollars ($100.00) valuation of said property.

In the event that a majority of those who shall vote in any election called pursuant to the provisions of this article do not vote in favor of the purpose for which such election is called, another election for the same purpose shall not be called for and held in the same unit, district, or area until the lapse of six months after such prior election; but the foregoing time limitation shall not apply to any election held in any unit, district, or other school area which is larger or smaller than the unit, district, or area in which such prior election shall have been held, or to any election held for a different purpose than such prior election. (1955, c. 1231; c. 1372, art. 14, s. 2; 1957, c. 1271, s. 2; 1959, c. 573, s. 10.)

§ **115-118. Who may petition for election.** — County and city boards of education may petition the board of county commissioners for an election in their respective administrative units or for any school area or areas therein.

In county administrative units, for any of the purposes enumerated in G.S. 115-116, the school committee of a district, or a majority of the committees in an area including a number of districts, or a majority of the qualified voters who have resided for the preceding twelve months in a school area less than a district, and which area is adjacent to a city unit or a district to which it is desired to be annexed and which can be included in a common boundary with said unit or district, or the committee of a district formed from portions of two or more contiguous counties, may petition the county board of education for an election.

The school committee of a district, or the majority of the committees in an area including a number of districts, or a majority of the qualified voters who have resided for the preceding twelve months in a school area less than a district, and which area, district, districts or territory is adjacent to a district or districts in a contiguous county to which it is desired to be annexed or consolidated, and with the approval of the county board of education of the contiguous county to which it is desired to be annexed or consolidated, may petition the county board of education for an election. (1955, c. 1372, art. 14, s. 3; 1961, c. 1019, s. 2.)

Quoted in Jordan v. Board of Comm'rs, 245 N.C. 290, 95 S.E.2d 884 (1957).

§ **115-119. Necessary information in petitions.** — The petition for an election shall contain such of the following information as may be pertinent to the proposed election:

(1) Purpose or purposes for calling the proposed election.

(2) A legally-sufficient description of the area, by metes and bounds or otherwise, in which the election is requested.

(3) The maximum rate of tax which is proposed to be levied. This paragraph shall not apply to a petition for an election to enlarge a city administrative unit.

(4) If the petition is for an election to enlarge a city administrative unit, it shall state therein that, if a majority of those who shall vote in the area proposed to be consolidated with the city administrative unit shall vote in favor of such enlargement, such area shall be consolidated with the city administrative unit, effective July first next following such election, and that there shall thereafter be levied in such area so consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit, including any tax to provide for the payment of school bonds theretofore issued by or for such city administrative unit or for all or some part of the school area annexed to such city administrative unit, unless payment of such bonds has otherwise been provided for.

(5) If the petition for an election is to supplement and equalize educational advantages, and if any school district or districts in the area in which it is proposed to vote such a tax have heretofore voted a supplementary tax, the petition and the notice of election shall state that in the event such election is carried, it will repeal all local taxes heretofore voted in any district except those in effect for debt service in any district, unless such debt service obligation is assumed by the county or otherwise provided for. (1955, c. 1372, art. 14, s. 4; 1957, c. 1271, ss. 3-5.)

Local Modification. — Lincoln, as to subdivision (5): 1959, c. 480, s. 2.

Cited in Jordan v. Board of Comm'rs, 245 N.C. 290, 95 S.E.2d 884 (1957).

§ **115-120. Boards of education must consider petitions.** — The board of education to whom the petition requesting an election is addressed shall receive the petition and give it due consideration. If, in the discretion of the board of education, the petition for an election shall be approved, it shall be endorsed by the chairman and the secretary of the board and a record of the endorsement shall be made in the minutes of the board. Petitions for an election to enlarge a city administrative unit shall be subject to the approval and endorsement of both county and city boards of education which are therein affected.

County and city boards of education shall have no discretion in granting an election to abolish a special school tax in any administrative unit, or district, or other school area, which has previously voted a supplemental tax, whenever a majority of the qualified voters residing in said unit, district or school area, shall petition for an election. When such a petition, showing the proper number of names of qualified voters, is presented to a board of education, it is hereby made mandatory that such petition shall be granted and the election held. If at the election a majority of those in the district who have voted thereon have voted "against local tax," the tax shall be deemed revoked and shall not be levied: Provided, that in Alexander, Anson, Beaufort, Buncombe, Carteret, Catawba, Chatham, Chowan, Cleveland, Craven, Currituck, Davidson, Duplin, Franklin, Gates, Greene, Henderson, Hoke, Hyde, Iredell, Jackson, Johnston, Lenoir, Martin, Mecklenburg, Moore, Nash, Onslow, Pamlico, Pitt, Randolph, Richmond, Robeson, Rockingham, Transylvania, Vance, Wake, Warren and Wilkes counties, petition of twenty-five percent (25%) of the number of voters in the election creating said special tax district, said petition to be signed by qualified voters residing in such special tax district, shall be sufficient.

The provisions of this section as to abolishing local tax districts shall not be applied when such local tax district is in debt in any sum whatever, or has obligated or committed its resources in any contractual manner: Provided, that no election for revoking a local tax in any local tax district shall be ordered and held in the district within less than one year from the date of the election at which the tax was voted and the district established, nor at any time within less than one year after the date of the last election on the question of revoking the tax in the district; and no petition seeking to revoke a school tax shall be approved by a board of education more often than once a year.

If the petition for an election in an area containing a number of districts is signed by the school committeeman of at least a majority of the school districts within a proposed special school taxing area, the board of education in such administrative unit shall endorse such petition and the election shall be held. (1955, c. 1372, art. 14, s. 5; 1957, c. 1100.)

Time for Holding Subsequent Election Revoking Local Tax.—The one year (formerly two year) period in which no election may be had should be computed from the last valid election on the subject. Weesner v. Davidson County, 182 N.C. 604, 109 S.E. 863 (1921).

§ **115-121. Action of board of county commissioners or governing body of municipality.** — Petitions requesting special school elections and bearing the approval of the board of education of the unit shall be presented to the board of county commissioners, and it shall be the duty of said board of county commissioners to call an election and fix the date for the same: Provided, that the board of education requesting the election may, for any reason deemed sufficient by said board which shall be specified and recorded in the minutes of the board, withdraw the petition before the close of the registration books, and if the petition be so withdrawn, the election shall not be held unless by some other provision of law the holding of such election is mandatory. In the case of a city administrative unit in any incorporated city or town and formed from portions of contiguous counties, said petition shall be presented to the governing body of the city or town situated within, coterminous with, or embracing such city administrative unit, and the election shall be ordered by said governing body, and said governing body shall perform all the duties pertaining to said election performed by the board of county commissioners in elections held under this article. (1955, c. 1372, art. 14, s. 6; 1959, c. 72.)

Duty of County Commissioners Ministerial. — The county commissioners have no discretion to order or not order an election. After the board of education has approved the petition, the duty of the commissioners is ministerial only and may be enforced by mandamus. Board of Educ. v. Board of County Comm'rs, 189 N.C. 650, 127 S.E. 692 (1925).

Quoted in Jordan v. Board of Comm'rs, 245 N.C. 290, 95 S.E.2d 884 (1957).

§ **115-122. Rules governing elections.** — In all elections held under this article, the board of county commissioners shall designate the polling place or places, appoint the registrars and judges of election, canvass and judicially determine the results of said election when the returns have been filed with them by the officers holding the election, and record such determination on their records.

If the purpose of the election is to enlarge a city administrative unit, the notice of election shall include the following: A statement of the purpose of the election; a legal description of the area within which the election is to be held; and a statement that if a majority of those who shall vote in the area proposed to be consolidated with the city administrative unit shall vote in favor of such enlargement such area shall be consolidated with the city administrative unit, effective July first next following such election, and there shall thereafter be levied in such area so consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit, including any tax levy to provide for the payment of school bonds theretofore issued by or for such city administrative unit or for all or some part of the school area annexed to such city administrative unit, unless payment of such bonds has otherwise been provided for.

If the election is to be held for any other purpose permitted by this article, the notice of election shall include the following: A statement of the purpose of the election; a legal description of the area within which the election is to be held; and, if any additional tax is proposed to be levied, the maximum rate of tax proposed to be levied, which shall not exceed the maximum prescribed by this article, and the purpose of the tax.

The notice of the election shall be given by publication at least once a week for at least three weeks in some newspaper published in, or having a general circulation in, the area in which the election is to be held. The first publication of such notice shall be made not less than thirty days before the election.

New registration of the qualified voters of the territory shall be ordered, unless the territory embraces an entire county or other organized political subdivision with current registration books; and in all cases a new registration may be ordered in the discretion of the board of county commissioners. Notice of said new registration shall be deemed to be sufficiently given by publication once in some newspaper published or circulated in said district at least twenty days before the close of the registration books. This notice of registration may be considered one of the three notices required of the election. Such published notice of registration shall state the days on which the books will be open for registration of voters and the place or places at which the books will be open on Saturdays. The books of such new registration shall close on the second Saturday before the election. The Saturday before the election shall be challenge day, and except as otherwise provided in this article, such election shall be held in accordance with the law governing general elections.

The ballots to be used in said election shall include, among other matter written or printed thereon, the words "For Local Tax" and "Against Local Tax" for all elections called under this article except those called under subsection (c) of G.S. 115-116, in which case the ballots shall have written or printed thereon the words "For Enlargement of the (here insert name of city) City Administrative Unit and school tax of the same rate" and "Against Enlargement of the (here insert name of city) City Administrative Unit and school tax of the same rate."

All other details of said election shall be fixed by the board of county commissioners ordering the election, and the expense of holding and conducting the election shall be provided by the board of education of the administrative unit in which the election is held: Provided, that where territory is proposed to be added to a city administrative unit, the expense shall be borne by such unit.

In all cases where an election is called and held under the provisions of this article, and a majority of the qualified voters voting at such election voted in favor of the tax or of propositions submitted, and the results of such election have been officially determined and recorded in the minutes of the board of county commissioners, the validity of such election, and of the registration for such election, shall not be open to question except in an action or proceeding commenced within thirty days after the determination of the results of such election. (1955, c. 1372, art. 14, s. 7; 1957, c. 1271, ss. 6, 7.)

Cross Reference.—As to time registration books must be kept open, see § 163-31.

Notice of Election.—It is not necessary that the newspaper, in which the notice of election is given, be published in the district; it is sufficient if the paper is circulated in the district where the election is to be held. Miller v. Duke School Dist., 184 N.C. 197, 113 S.E. 786 (1922).

Failure to give the notice of election is immaterial where such failure does not affect the result of the election. Younts v. Commissioners of Union County, 151 N.C. 582, 66 S.E. 575 (1909); Gregg v. Board of Comm'rs, 162 N.C. 479, 78 S.E. 301 (1913).

§ 115-122.1. Effective date; levy of taxes.—(a) If, in any election authorized by this article, a majority of the voters voting in such election vote in favor of the enlargement of a city administrative unit, such enlargement shall become effective July first next following such election; and thereafter there shall be levied and collected in the area consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit.

(b) If, in any election authorized by this article, a majority of the voters voting in such election vote in favor of a supplemental tax, or in favor of the increase of a supplemental tax, or in favor of a tax to supplement and equalize educational advantages, the tax so authorized shall be levied and collected beginning with the fiscal year commencing July first next following such election. (1957, c. 1271, s. 8.)

§ 115-122.2. Conveyance of school property upon enlargement of city administrative unit. — Before any election is called to enlarge a city administrative unit, if any school property is located in the area proposed to be consolidated with the city administrative unit, the board of education of such city administrative unit and the board of education of the county administrative unit concerned shall agree with each other as to the school property to be conveyed and transferred to the board of education of the city administrative unit if a majority of the voters voting in the election vote in favor of such enlargement. And, if such enlargement is authorized by such election, the board of education of the county administrative unit shall, within ten days after July first next following such election, convey and transfer to the board of education of the city administrative unit the property so agreed to be conveyed and transferred. (1957, c. 1271, s. 8.)

§ 115-123. Elections in districts created from portions of contiguous counties.—Districts already created and those that may be created from portions of two or more contiguous counties, may hold elections under this article to be incorporated or to vote a special local tax therein for the purposes enumerated in G.S. 115-116.

Elections for either purpose must be initiated by petitions from the portion of each county included in the district, or the proposed district. In districts already created, the majority of the committeemen must sign the petition. In proposed districts, the petition must be signed by fifteen percent (15%) of the qualified voters who shall have resided in such area for the preceding twelve months. When the petitions shall have been approved by each of the boards of education of such contiguous counties, they shall then be presented by each of said boards of education to their respective boards of county commissioners.

The boards of commissioners of each of the contiguous counties, in compliance with the provisions of this article relating to the conduct of local tax elections, shall then call and hold an election in that portion of the proposed district lying in its county. Election returns shall be made from each portion of the proposed district to the board of commissioners ordering the election in that portion, and the returns shall be canvassed and recorded as required in this article for local tax districts.

If a majority of the voters who vote thereon in each of the counties shall vote in favor of the tax, or for incorporation, the election shall be determined to have carried in the whole district, and shall be so recorded in the records of the board of county commissioners in each county in which the district is located.

If the proposition submitted to the voters in the election is a question of incorporating the district, the ballots for this election shall have printed thereon the words "For incorporation" and "Against incorporation." If the election for incorporation is carried, the district is thereby incorporated and shall possess all the authority of incorporated districts.

In case the election carried in each portion of the proposed district, the several county boards of education concerned shall each pass a formal order consolidating the territory into one joint local tax district, which shall be and become a body corporate by the name and style of "................ Joint Local Tax School District of .... Counties." The county board of education having the largest school census and the largest area in the part of the joint local tax district lying in its county shall determine the location of the schoolhouse; but if the largest census and largest area do not both lie in the same county, then the county boards shall jointly select the site for the building; and in case of a disagreement they shall submit the question to a board of arbitration consisting of three members, one member to be named by each board of education if three counties are concerned, or if there are but two counties, then each board shall choose one member and the two so named shall select the third member. The decision of this board of arbitration shall be binding on all county boards of education concerned.

The school committee shall consist of five members, three of whom shall be appointed by the board of education of the county in which the building is to be situated and two to be appointed by the other county or counties, but the terms of office shall be so arranged that not more than two members will retire in any one year. The committee shall officially exercise such corporate powers as are conferred by this section. This committee shall have all the powers and duties of committees of local tax districts, and in addition thereto it shall adopt a corporate seal and have the power to sue and be sued in its corporate name. The committee shall have the power to determine the rate of local taxes to be levied in said joint district, not exceeding the rate authorized by the voters of the district, and when the committee shall have so determined the rate of local taxes to be levied in said joint district and shall have certified same to the boards of commissioners of the several counties from which said joint district is created, the said boards of county commissioners, and each of them, shall levy said rate of local taxes within the portion of said joint district lying within their respective counties; and the taxes so levied shall be collected in the several counties as other taxes are collected therein, and shall be paid over by the officers collecting the same to the treasurer or other fiscal agent of the county in which the schoolhouse is located, or is to be located, to be by him placed to the credit of the joint district.

The committee shall have as full authority to call and hold elections for the voting of bonds of the district as is conferred upon boards of education and boards of commissioners. In calling the election for a bond issue, no petition of the county board of education shall be necessary; but the election shall be called and held by the school committee of the incorporated local tax school district under as ample authority as is conferred upon both county boards of education and boards of commissioners. When bonds of the district have been voted under authority of this section, they shall be issued subject to the limitations of the Local Government Act and County Fiscal Control Act in the corporate name of the district, signed by the chairman and secretary of the school committee, sold by the school committee, and the proceeds thereof deposited with the treasurer of the county board of education of the county in which the school building is, or is to be, located, to be placed to the credit of the joint district, and the taxes for the payment of principal and interest shall be levied and collected as provided hereinabove for the levy and collection of local taxes: Provided, that certified copies of the bond orders and resolutions shall be recorded on the minutes of the board of commissioners of each county constituting a part of the joint school district.

The building of all schoolhouses in such joint local tax districts shall be effected by the county board of education of the county in which the building is to be located under authority of law governing the erection of school buildings by county boards of education. It shall be lawful for the boards of education in the other county or counties to contribute to the cost of the building in proportion to the number of children shown by the official census to be resident within that part of the joint district lying within each county respectively. If the building is to be erected from moneys borrowed from the State Literary Fund or from county taxation, then each county board of education shall contribute to its construction in the proportion set out above and pay over its contribution to the treasurer of the county board having control of the erection of the building: Provided, it shall be lawful for the county board that controls the erection of the building to borrow from the State and lend to the district the full amount of the cost of the building in cases where the entire amount, or part of the amount, is to be repaid by the district from district funds.

All district funds of a joint local tax district shall be kept distinct from all other funds, placed to the credit of the district, and expended as other local tax or district bond funds are lawfully disbursed.

The county board of education and county superintendent of schools of the county in which the schoolhouse is located shall have as full and ample control over the joint school and the district as it has in the case of other local tax districts, subject only to the limitations of this section.

The committee of the joint school district shall prepare a budget annually in accordance with the law governing budgets in which the committee will indicate objects and items of expenditure which are proposed to be made from the collection of the special tax of the district. This budget shall show the proportionate part of the expense to be contributed by each county, which part shall be ascertained on the basis of the proportions of the total district school census living in each respective county. When this budget is completed by the committee of the joint district, a copy of it shall be filed with the county board of education of each county, and it shall be the duty of each board of education, if it approves the district budget, to incorporate it in the county budget to be submitted to the board of commissioners of each county. Each of the several county boards of education is hereby directed to pay over its proportionate part of the district budget, when and as collected, to the treasurer of the board of education of the county in which the school plant is located for the purposes for which it has been levied and collected.

All districts formed from portions of contiguous counties before the ratification of this article are hereby authorized and empowered to exercise all the powers and privileges conferred by this article. (1955, c. 1372, art. 14, s. 8.)

§ **115-124. Levy and collection of taxes.**—In cases where administrative units or districts have voted, or may hereafter vote, a tax in order to operate schools of a higher standard than that provided by State support, county and city boards of education, at the same time the other budgets are filed, shall file a supplemental budget therefor and request that a sufficient levy be made by the tax levying authorities, not in excess of the rate voted by the people in such unit or district. The tax levying authorities may approve or disapprove this supplemental budget in whole or in part, and shall levy such taxes as necessary to provide for the approved budget for supplemental purposes, not exceeding the amount of the tax levy authorized by the vote of the people. The expenditure of the proceeds of said levy shall be in accordance with the aforesaid supplemental budget as approved by the tax levying authorities: Provided, that the tax levying authorities may fix a charge against any administrative unit or district for collection of such levies not exceeding one percent (1%) thereof. The superintendent of schools, the county accountant or auditor, the officer in charge of tax records, and the county treasurer shall keep records in their respective offices, showing the valuation of all property in the unit, district, or area; the rate of tax authorized annually to be levied, and the amount annually derived from the local tax. It shall be illegal for any part of the local tax fund to be used for any purpose other than those purposes authorized by the election in the unit, or district. (1955, c. 1372, art. 14, s. 9; 1965, c. 584, s. 12.)

Editor's Note. — The 1965 amendment eliminated an exception immediately preceding the proviso in the third sentence.

SUBCHAPTER VI. SCHOOL PROPERTY.

Article 15.

School Sites and Property.

§ 115-125. Acquisition of sites.—County and city boards of education may acquire suitable sites for schoolhouses or other school facilities either within or without the administrative unit; but no school may be operated by an administrative unit outside its own boundaries, although other school facilities such as repair shops, may be operated outside the boundaries of the administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site for a school, school building, school bus garage or for a parking area for school buses or for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of article 2, chapter 40 of the General Statutes, and the determination of the county or city board of education of the land necessary for such purposes shall be conclusive; provided that not more than a total of thirty (30) acres shall be acquired by condemnation for any one site for a schoolhouse or other school facility as aforesaid; provided, however, that any school administrative unit located within a county having a population of 150,000 or more may acquire by condemnation a total of not more than forty (40) acres for any one school site. (1955, c. 1335; c. 1372, art. 15, s. 1; 1957, c. 683.)

Constitutionality.—This section does not violate the requirements of just compensation and due process provided by the 14th Amendment to the United States Constitution. Doby v. Brown, 135 F. Supp. 584 (M.D.N.C. 1955), aff'd, 232 F.2d 504 (4th Cir. 1956).

History of Section.—See Board of Educ. v. Forrest, 190 N.C. 753, 130 S.E. 621 (1925).

Intent of 1957 Amendment.—The legislative intent, in enacting Session Laws 1957, c. 683, was to rewrite Session Laws 1955, c. 1372, art. 15, s. 1. Topping v. State Bd. of Educ., 249 N.C. 291, 106 S.E.2d 502 (1959).

Proceedings Instituted under § 40-2.—Condemnation proceedings for a school site must be considered as instituted under the provisions of § 40-2, pursuant to authority conferred by this section. Topping v. State Bd. of Educ., 249 N.C. 291, 106 S.E.2d 502 (1959).

The word "site" is broad enough to embrace such land, not exceeding the statutory limit, as may reasonably be required for the suitable and convenient use of the particular building; and land taken for a playground in conjunction with a school may be as essential as land taken for the schoolhouse itself. 24 R.C.L. 582.

Discretion of School Authorities.—The question of changing the location of a schoolhouse, as well as the selection of a site for a new one, is vested in the sound discretion of the school authorities, and their action cannot be restrained by the courts, unless it is in violation of some provision of the law, or the authorities have been influenced by improper motives, or there has been a manifest abuse of discretion on their part. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949); Wayne County Bd. of Educ. v. Lewis, 231 N.C. 661, 58 S.E.2d 725 (1950); Feezor v. Siceloff, 232 N.C. 563, 61 S.E.2d 714 (1950).

While school authorities have the discretionary power to select sites for new schools and to change the location of existing schools, their action in this regard may be enjoined when it is without authority of law, or when the selection of a proposed site is so clearly unreasonable as to amount to a manifest abuse of their discretion. Brown v. Candler, 236 N.C. 576, 73 S.E.2d 550 (1952).

The advisability of taking the property for public school use is a matter committed to the sound discretion of the petitioner, with the exercise of which neither the respondents nor the courts can interfere. Burlington City Bd. of Educ. v. Allen, 243 N.C. 520, 91 S.E.2d 180 (1956).

Facts Not Showing Abuse of Discretion.—The facts that the site for a high school selected by the school authorities in a mountainous section of the State may be approached only by a crooked highway and over a narrow bridge, and that there may be other satisfactory sites for such school, does not compel or support the conclusion that the school authorities abused their discretion in selecting the site. Brown v. Candler, 236 N.C. 576, 73 S.E.2d 550 (1952).

Selection of Site on Grounds of County Home. — Section 153-9 does not preclude school authorities from selecting, without advertising, a part of the grounds of a county home for the site of a high school when its use would not interfere with the use of the remainder of the site for a county home. Brown v. Candler, 236 N.C. 576, 73 S.E.2d 550 (1952).

High School and Elementary School on Adjoining Sites.—A high school and an elementary school may be located on adjoining sites. However, neither site may contain more than ten (now thirty) acres of land, if any part thereof must be obtained by condemnation. Wayne County Bd. of Educ. v. Lewis, 231 N.C. 661, 58 S.E.2d 725 (1950).

Where the county board of education selects a site for an elementary school contiguous to its high school site, it may condemn for such elementary school site lands not in excess of ten (now thirty) acres, since the board has the discretionary power to locate the schools on adjoining sites. Wayne County Bd. of Educ. v. Lewis, 231 N.C. 661, 58 S.E.2d 725 (1950).

There is no limitation on the acreage which may be purchased or donated for a school site. The limitation applies only where the site, or any part thereof, must be obtained by condemnation. In such cases, the land owned, donated or purchased, together with the adjacent lands to be condemned, shall not exceed ten (now thirty) acres. Wayne County Bd. of Educ. v. Lewis, 231 N.C. 661, 58 S.E.2d 725 (1950).

Service by Publication.—The statutes relating to service of process by publication (§ 1-98 et seq.) apply to a resident defendant in a proceeding to condemn a school site, no less than to such defendant in any other special proceeding. Brown v. Doby, 242 N.C. 462, 87 S.E.2d 921 (1955).

Former Procedure. — As to procedure for condemnation of land for a school site under this section as it stood before the 1957 amendment, see Burlington City Bd. of Educ. v. Allen, 243 N.C. 520, 91 S.E.2d 180 (1956).

For case involving title to school property and decided under former statute, see Board of Educ. v. Town of Waynesville, 242 N. C. 558, 89 S.E.2d 239 (1955).

Stated in State Highway Comm'n v. Greensboro City Bd. of Educ., 265 N.C. 35, 143 S.E.2d 87 (1965).

Cited in Eller v. Board of Educ., 242 N.C. 584, 89 S.E.2d 144 (1955).

§ 115-126. Sale, exchange or lease of school property; easements and rights-of-way.—(a) When in the opinion of any county board of education, or of any board of education for any city administrative unit, the use of any building, building site, or other real property owned or held by such board is unnecessary or undesirable for public school purposes, the board may sell such property at public auction. Such sale shall be held on the property to be sold or at the courthouse door in the county in which such property is located, and shall be advertised and otherwise conducted as is prescribed by statute for judicial sales of real property. The sale shall then remain open for ten days to permit the making of an upset bid. The resale of such property following such upset bid, and the procedure therefor shall be as prescribed by statute for judicial sales of real property. If the time for making an upset bid shall expire without such bid having been made, the board may confirm the sale if it deems the highest bid to be an adequate price. Upon confirmation of the sale by the board, the chairman and the secretary of the board shall execute a deed to the purchaser of the property upon his compliance with his bid. Confirmation of the sale by the clerk of the superior court shall not be required. The proceeds of the sale shall be paid to the treasurer of the school fund of such county or city administrative unit, and shall be used either to reduce the bonded indebtedness of such administrative unit or for capital outlay purposes.

(b) When in the opinion of any county board of education, or of any board of education for any city administrative unit, the use of any property, other than real property, owned or held by such board is unnecessary or undesirable for public school purposes, the board may sell such property either through the facilities of the North Carolina Division of Purchase and Contract or at public auction. If sold at public auction such sale shall be held at such place within such county or city administrative unit as shall be designated by the board, and shall be advertised and otherwise conducted as is prescribed by statute for the sale of personal property under a power of sale contained in a chattel mortgage. Title to the property so sold shall not pass by reason of such sale until the sale has been confirmed by the board and the purchaser has complied with the terms of his bid. The proceeds of such sale shall be paid to the treasurer of the school fund of such county or city administrative unit.

(c) If in the opinion of the board the highest bid at any sale or resale of real or personal property sold pursuant to the provisions of this section is not adequate, such bid may be rejected and the property may again be advertised for sale as provided in this section, or may be sold by the board at a private sale for a price in excess of the highest bid at such public sale: Provided such private sale is consummated within a period of one year from the date of the initial public offering.

Any sale of real property at private sale made prior to May 1, 1959 is hereby validated, provided the real property so sold was first advertised for sale at public auction as provided by this section and the price received therefor was in excess of the highest bid received at such public offering.

(d) In the acquisition by it of any property for public school purposes any county board of education, or any board of education for any city administrative unit, may exchange therefor, as full or partial payment therefor, any property owned or held by it, without compliance with the provisions of this section: Provided, that for at least ten days before any exchange of real property shall be consummated, the terms of such proposed exchange shall be filed in the office of the superintendent of schools of such administrative unit and in the office of the clerk of the superior court in the county in which such property is located, and a notice thereof published one or more times in a newspaper having a general circulation in the administrative unit at least ten days before the consummation of said exchange.

(e) When in the opinion of any county board of education, or of the board of education for any city administrative unit, the use of any property owned or held by it is unnecessary or undesirable for public school purposes, but the sale of such property is not practicable or in the public interest, such board may in its discretion enter into an agreement with any other person, firm or corporation for the lease of such property to such person, firm or corporation for a term not in excess of one year, upon such terms and conditions as the board shall deem advisable and in the public interest.

(f) In addition to the foregoing, county and city boards of education are hereby authorized and empowered, in their sound discretion, to grant easements to any public utility, municipality or quasi-municipal corporation to furnish utility services to school property, with or without compensation except the benefits accruing by virtue of the location of the said public utility, and to dedicate portions of any lands owned by such boards as rights-of-way for public streets, roads or sidewalks, with or without compensation except the benefits accruing by virtue of the location or improvement of such public streets, roads or sidewalks. (1955, c. 1372, art. 15, s. 2; 1959, c. 324; c. 573, s. 11; 1961, c. 395.)

Local Modification. — Burke: 1959, c. 1037; Craven: 1965, c. 143; Franklin: 1959, c. 213; Greene: 1965, c. 784; Nash: 1963, c. 1038; 1965, c. 731; Transylvania: 1953, c. 723.

Lease of Surplus Lands.—A city school administrative unit contemplated by § 115-4 is a governmental agency separate and distinct from the city, and such administrative unit, having acquired more land than presently needed for school purposes, has legislative authority to lease the surplus, under this section, either for a public or a private purpose, so long as it exercises its discretion in good faith. Where the lease stipulates that use shall be for a public or semipublic purpose, the law will presume the parties intended and contemplated use of the property without unlawful discrimination because of race, color, religion or other illegal classification. State v. Cooke, 248 N.C. 485, 103 S.E.2d 846 (1958).

Delegation of Authority. — Where a chartered school district acquired property by foreclosure of a loan made from its sinking fund, the property thus acquired being in no way connected with the operation of its schools, and the trustees of the district instructed the property committee to consider any offers for the property in excess of a stipulated sum, and delegated "power to act" in the matter, and where the chairman thereafter entered into a contract for the sale of the property for a price in excess of the minimum amount stipulated by the trustees, upon a suit by a taxpayer of the district to restrain conveyance to the purchaser in the contract, it was held that the trustees of the district were without power to delegate authority to sell the school property, and the district was not bound by the contract entered into and a decree restraining the execution of the contract was proper. Bowles v. Fayetteville Graded Schools, 211 N.C. 36, 188 S.E. 615 (1936).

§ **115-127. Deeds to property.**—All deeds to school property shall, after registration be delivered to the superintendent of the administrative unit in which the property is located and he shall provide a safe place for preserving all such deeds. (1955, c. 1372, art. 15, s. 3.)

§ **115-128. Vehicles owned by boards of education exempt from taxation; registration.** — All school buses, trucks, automobiles and other motor vehicles owned by county and city boards of education and used for transporting pupils to and from school or used by other school personnel in the prosecution of their work, shall be exempt from taxation, but all such vehicles shall be duly registered in the Department of Motor Vehicles as provided in G.S. 20-84. (1955, c. 1372, art. 15, s. 4.)

§ **115-129. Provisions for school buildings and equipment.**—It shall be the duty of the boards of education of the several administrative school units of the State to make provisions for the nine months' school term by providing adequate school buildings equipped with suitable school furniture and apparatus. The needs and the cost of such buildings, equipment, and apparatus, shall be presented each year when the school budget is submitted to the respective tax levying authorities. The boards of commissioners shall be given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped, and it shall be the duty of the several boards of county commissioners to provide funds for the same. (1955, c. 1372, art. 15, s. 5.)

Commissioners to Determine What Expenditures Shall Be Made.—The board of commissioners of the county, and not the board of education, is charged with the duty to determine what expenditures shall be made for the erection, repair and equipment of school buildings in the county. Johnson v. Marrow, 228 N.C. 58, 44 S.E.2d 468 (1947).

The county board of education surveys annually the needs of the county school system in respect to school plant facilities and equipment and by resolution presents its plan to the board of commissioners. Then, and only then, it becomes the duty of the board of commissioners to determine what expenditures, if any, proposed for such purposes by the board of education are necessary. When it determines that funds are necessary for any one or all of the proposed projects, then it must furnish the funds necessary to provide the facilities incorporated in the approved projects. Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

The right of the board of commissioners to determine what expenditures shall be made arises when a proposal for the expenditure of funds for school facilities is made by the board of education. Having determined that question and having provided the funds it deems necessary, its jurisdiction ends and the authority to execute the plan of enlargement or improvement reverts to the board of education. Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

But They Cannot Interfere with Authority of Board of Education.—The control of the board of county commissioners over the expenditure of funds for the erection, repair and equipment of school buildings will not be construed so as to interfere with the exclusive control of the schools vested in the county board of education or the trustees of an administrative unit. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949); Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

All Expenditures Must Be Authorized. — All expenditures for the construction, repair and equipment of school buildings in a county must be authorized by the board of county commissioners, acting in good faith, pursuant to statutory and constitutional authority. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949).

Expense a County-Wide Charge.—It is the duty of the county commissioners, upon information being furnished by the county boards of education, to provide the funds necessary for suitable buildings and proper equipment, and such expenses are a county-wide charge. Reeves v. Board of Educ., 204 N.C. 74, 167 S.E. 454 (1933).

Commissioners May Reallocate Proceeds of Bond Issue. — A bond order issued under § 153-78 set out in detail the estimates and projects for which the funds were proposed to be used in discharge of the constitutional requirement of a six months' school term within the municipal administrative unit. It was held that § 153-107 did not preclude the board of county commissioners, upon its finding, after investigation, of changed conditions, from reallocating the proceeds of bonds to different projects upon further finding, after investigation, that such reallocation of the funds was necessary to effectuate the purpose of the bond issue. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949).

But May Not Change Purpose for Which Bonds Were Issued. — Where the county commissioners attempted to change the purpose for which school bonds were issued, such action of the commissioners was held to constitute a clear invasion of the prerogatives of the board of education. Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

Any change in plan must be initiated by the board of education. Then the board of commissioners, acting in good faith, may, in proper cases, after finding the facts required by statute, determine whether the reallocation of funds or the change in plans is or is not necessary, and approve or disapprove the expenditure of the funds theretofore furnished by it for the execution of the amended plan. Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

§ **115-130. Erection and repair of schoolhouses.**—The building of all new schoolhouses and the repairing of all old schoolhouses shall be under the control and direction of, and by contract with, the board of education in which such building and repairing is done. Boards of education shall not invest any money in any new building that is not built in accordance with plans approved by the State Superintendent as to structural and functional soundness, safety and sanitation, nor contract for more money than is made available for its erection. All contracts for buildings shall be in writing and all buildings shall be inspected, received, and approved by the county or city superintendent and the architect before full payment is made therefor: Provided, that this section shall not prohibit boards of education from repairing and altering buildings with the help of janitors and other regular employees of said board.

In the case of any school buildings erected, repaired, or equipped with any money loaned or granted by the State to any administrative unit, the State Board of Education, under such rules as it may deem advisable, may retain any amount not to exceed fifteen percent (15%) of said loan or grant, until such completed buildings, erected or repaired, in whole or in part, from such loan or grant funds shall have been approved by a designated agent of the State Board of Education.

Upon such approval by the State Board of Education, the State Treasurer is authorized to pay the balance of the loan or grant to the treasurer of the school administrative unit for which said loan or grant was made. (1955, c. 1372, art. 15, s. 6.)

Cross Reference. — As to penalty for school officials to have pecuniary interest in school supplies, see §§ 14-236, 14-237.

Power Discretionary.—The building of a school is a matter vested by the statute in the sound discretion of the county board of education and not to be restrained by the courts, unless in violation of some provision of law, or unless the committee is influenced by improper motives, or there is misconduct on their part. Venable v. School Comm., 149 N.C. 120, 62 S.E. 902 (1908); Pickler v. County Board, 149 N.C. 221, 62 S.E. 902 (1908).

Whether a change should be made in the location of a school, as well as the selection of a site for a new one, is vested in the sound discretion of the school authorities, and their action cannot be restrained by the courts unless in violation of some provision of law, or the authorities have been influenced by improper motives, or there has been a manifest abuse of discretion on their part. Feezor v. Siceloff, 232 N.C. 563, 61 S.E.2d 714 (1950).

Money Available for Erection of Building.—Where a county board of education consolidated five existing high schools into one county-wide high school with the approval of the State Board of Education, and plans for the new school building were approved by the State Superintendent of Public Instruction, and public moneys for the erection of the building were allocated to the county board of education, equity would not enjoin the county board of education from entering into a contract for the construction of the building on the ground that the county board of commissioners had refused to provide funds for the construction of the building, and that the proposed contract would offend this section, which provides that a county board of education has no authority to contract for the construction of a new schoolhouse costing more than the "money . . . available for its erection." Edwards v. Yancey County Bd. of Educ., 235 N.C. 345, 70 S.E.2d 170 (1952).

Providing Electric Lights.—Under the general statutory authority the erection of electric transmission lines to supply school buildings with electric lighting is given to the board of education of a county. But contracts for such work need not be in writing, nor need they be approved by the State Superintendent. Conrad v. Board of Educ., 190 N.C. 389, 130 S.E. 53 (1925).

§ 115-131. Board cannot erect or repair building unless site is owned by board.—County and city boards of education shall make no contract for the erection or repair of any school building unless the site upon which it is located is owned in fee simple by the said board: Provided, that the board of education of a county or city administrative unit, with the approval of the board of county commissioners is authorized to appropriate funds to aid in the establishment of a school facility and the operation thereof in an adjoining county or city administrative unit when a written agreement between the boards of education of the administrative units involved has been reached and the same recorded in the minutes of said boards, whereby children from the unit making such appropriations shall be entitled to attend the school so established.

In all cases where title to property has been vested in the trustees of a special charter district which has been abolished and has not been reorganized, title to such property shall be vested in the county or city board of education of the county embracing such former special charter district. (1955, c. 1372, art. 15, s. 7.)

Not Applicable to Electric Light Wires.—A former statute similar to this section did not apply to the erection of electric light wires. It applied only to sites for school buildings; it did not extend to or include the rights-of-way. Conrad v. Board of Educ., 190 N.C. 389, 130 S.E. 53 (1925).

§ 115-132. Duty of board to provide equipment for school buildings.—It shall be the duty of county and city boards of education and tax levying authorities to provide suitable supplies for the school buildings under their jurisdiction. These shall include, in addition to the necessary instructional supplies, proper window shades, blackboards, reference books, library equipment, maps, and equipment for teaching the sciences.

Likewise, it shall be the duty of said boards of education and boards of county commissioners to provide every school with a good supply of water, approved by the State Board of Health, and where such school cannot be connected to water-carried sewerage facilities, there shall be provided sanitary privies for the boys and for the girls according to specifications of the State Board of Health. Such water supply and sanitary privies shall be considered an essential and necessary part of the equipment of each public school and may be paid for in the same manner as desks and other essential equipment of the school are paid for. (1955, c. 1372, art. 15, s. 8.)

Cross Reference. — As to penalty for school officials to have pecuniary interest in school supplies, see §§ 14-236, 14-237.

Compliance Presumed.—A county board will not be enjoined from constructing a new school building on the grounds that it has failed to make plans for water and sewer service for the school, where it appears from the complaint that at the time the suit was instituted the construction of the proposed building had progressed only to the stage where bids had been accepted, since presumably the defendants at the proper time will comply with this section and make provision for a proper supply of water. Lamb v. Randolph County Bd. of Educ., 235 N.C. 377, 70 S.E.2d 201 (1952).

Bonds for Sanitary Improvements.—See Taylor v. Board of Educ., 206 N.C. 263, 173 S.E. 608 (1934).

§ 115-133. Duties of boards of education to keep buildings in repair and determine use of school property.—It shall be the duty of county and city boards of education and tax levying authorities, in order to safeguard the investment made in public schools, to keep all school buildings in good repair to the end that all public school property shall be taken care of and be at all times in proper condition for use. It shall be the duty of all committeemen, principals, teachers, and janitors to report to their respective boards of education immediately any unsanitary condition, damage to school property, or needed repair. All principals, teachers, and janitors shall be held responsible for the safekeeping of the buildings during the school session and all breakage and damage shall be repaired by those responsible for same, and where any principal or teacher shall permit damage to the public school buildings by lack of proper discipline of pupils, such principal or teacher shall be held responsible for such damage: Provided, principals and teachers shall not be held responsible for damage that they could not have prevented by reasonable supervision in the performance of their duties.

Notwithstanding the provisions of G.S. 115-51, county and city boards of education shall have authority to adopt rules and regulations by which school buildings, including cafeterias and lunchrooms, may be used for other than school purposes so long as such use is consistent with the proper preservation and care of the public school property. No liability shall attach to any board of education, individually or collectively, for personal injury suffered by reason of the use of such school property. (1955, c. 1372, art. 15, s. 9; 1957, c. 684; 1963, c. 253.)

Editor's Note. — The 1963 amendment rewrote the second paragraph.

§ 115-133.1. Duties of boards of education and tax levying authorities to insure public school buildings and equipment.—(a) The board of every administrative unit in the public school system of this State, in order to safeguard the investment made in public schools, shall

(1) Insure and keep insured to the extent of not less than seventy-five percent (75%) of the current insurable value as determined by the insurer and the insured of each of its insurable buildings against fire, lightning and the perils embraced in extended coverage; and

(2) Insure and keep insured adequately the equipment and contents of said building.

(b) The tax levying authority for each administrative unit shall appropriate funds necessary for compliance with the provisions of subsection (a).

(c) Wilful failure to comply with the provisions of (a) and (b) above, is declared a misdemeanor punishable by a fine of not more than fifty dollars ($50.00) or imprisonment for not more than 30 days. Every twenty-four hours without such insurance constitutes a separate offense. (1957, c. 1040.)

ARTICLE 16.

State Insurance of Public School Property.

§ 115-134. Authority and rules for organization of system.—The State Board of Education is hereby authorized, directed and empowered to establish a division to manage and operate a system of insurance for public school property. The Board shall adopt such rules and regulations as, in its discretion, may be necessary to provide all details inherent in the insurance of public school property. The Board shall employ a director, safety inspectors, engineers and other personnel with suitable training and experience, which in its opinion is necessary to insure and protect effectively public school property, and it shall fix their compensation with the approval of the Personnel Department. (1955, c. 1372, art. 16, s. 1.)

§ 115-135. Public School Insurance Fund; decrease of premiums when fund reaches five percent (5%) of total insurance in force.—There shall be set up in the books of the State Treasurer a fund to be known and designated as the "Public School Insurance Fund," which fund hereafter in this article is referred to as "the Fund." In order to provide adequate reserves against losses which may be incurred on account of the risks insured against as provided in this article and to provide payment for such losses as may be incurred therein, there is hereby appropriated to "the Fund" the sum of two million dollars ($2,000,000.00), which shall be paid from and charged to the State Literary Fund as set up and defined in this chapter. When the reserves in "the Fund" shall be increased by the payment of premiums by the governing boards of county and city administrative school units, or otherwise, to the extent of one million dollars ($1,000,000.00), there shall be transferred from "the Fund" back to the State Literary Fund the sum of one million dollars ($1,000,000.00) and when "the Fund" shall again be increased to the extent of another one million dollars ($1,000,000.00), there shall be transferred therefrom back to the State Literary Fund an additional sum of one million dollars ($1,000,000.00) in full reimbursement of the sum of two million dollars ($2,000,000.00), which is authorized to be transferred from the State Literary Fund by the provisions hereof. All funds paid over to the State Treasurer for premiums on insurance by the governing boards of county and city school administrative units and all money received from interest or from loans and deposits and from any other source connected with the insurance of the property hereinafter referred to shall be held by the State Treasurer in "the Fund" for the purpose of paying all fire, lightning, windstorm, hail and explosion losses for which the said Fund shall be liable and the expenses necessary for the proper conduct of the insurance of said property, together with such premiums for reinsurance of such part of said insurance as the State Board of Education may deem necessary to reinsure, as provided for in this article. Such part of the money in "the Fund" as may not be needed for the payment of current demands thereon shall be invested by the State Treasurer in such securities as constitute permissible investments for State sinking funds, and all of the earnings thereon shall be paid into "the Fund." The State Treasurer shall annually report to the State Board of Education and to the General Assembly the status of "the Fund" and a detailed statement of the investments therein and earnings therefrom.

When the Fund herein provided for reaches the sum of five percent (5%) of the total insurance in force, then annually thereafter the State Board of Education shall proportionately decrease the premiums on insurance to an amount which will be sufficient to maintain "the Fund" at five percent (5%) of the total insurance in force, and in the event in the judgment of the State Board of Education the income from the investments of "the Fund" are sufficient to maintain the same at five percent (5%) of the total insurance in force, no premiums shall be charged for the ensuing year, provided that no building or property insured shall cease to pay premiums until five annual payments of premiums have been made whether or not through such payments the Fund shall be increased beyond five percent (5%) of the total insurance in force, unless such building or property shall cease to be insurable within the meaning of this article within such five-year period. (1955, c. 1372, art. 16, s. 2.)

§ 115-136. Insurance of property by school governing boards; notice of election to insure and information to be furnished; outstanding policies.—All county and city boards of education may insure all property within their units against the direct loss or damage by fire, lightning, windstorm, hail or explosions resulting by reason of defects in equipment in public school buildings and other public school properties in "the Fund" hereinbefore set up and provided for. Any property covered by an insurance policy in effect on the date when the property of a unit is insured in "the Fund" shall be insured by "the Fund" as of the expiration of the policy. Each school governing board shall give notice of its election to insure in "the Fund" at least thirty days prior to such insurance becoming effective and shall furnish to the State Board of Education a full and complete list of all outstanding fire insurance policies, giving in complete detail the name of the insurers, the amount of the insurance and expirations thereof. While the said insurance policies remain in effect, "the Fund" shall act as coinsurer of the properties covered by such insurance to the same extent and in the same manner as is provided for coinsurance under the provisions of the standard form of fire insurance as provided by law, and in the event of loss shall have the same rights and duties as required by participating insurance companies. (1955, c. 1372, art. 16, s. 3; 1957, c. 686, s. 3.)

§ 115-137. Inspections of insured public school properties.—The State Board of Education shall provide for periodic inspections of all public school properties in the State of North Carolina insured under the provisions hereof, the said inspections for safety of buildings and particularly school buildings, against the loss or damage from fire and explosions. The inspections shall be the basis for offering such engineering advice as may be thought to be necessary to safeguard the children in the public schools from death and injury from school fires or explosions and to protect said school properties from loss, and the local school authorities shall be required so far as possible, and reasonable, to carry out and put into effect such recommendations in respect thereto as may be made by the State Board of Education. (1955, c. 1372, art. 16, s. 4.)

§ 115-138. Information to be furnished prior to insuring in fund; providing for payment of premiums.—County and city boards of education shall at least thirty days before insuring in "the Fund," furnish to the State Board of Education a complete and detailed list of all school buildings and contents thereof and other insurable school property, together with an estimate of the present value of the said property. Valuation for purposes of insuring in "the Fund" shall be reached by agreement in accordance with the procedure hereinafter set up for adjustment of losses. County and city boards of education and the tax levying authorities shall be required to provide for the payment of premiums for insurance on the school properties of each unit, respectively, to the extent of not less than seventy-five percent (75%) of the current insurable value of the said properties, including the insurance in fire insurance companies and the insurance provided by "the Fund" as set out herein. (1955, c. 1372, art. 16, s. 5.)

§ **115-139. Determination and adjustment of premium rates; certificate as to insurance carried; no lapsation; notice as to premiums required, and payment thereof.**—The State Board of Education shall determine the annual premium rate to be charged for insurance of school properties as herein provided, which said rate shall not, however, be in excess of the rates fixed by law for insurance of such properties in effect on May 31, 1948, and such rates shall be adjusted from time to time so as to provide insurance against damage or loss resulting from fires, lightning, windstorm, hail or explosions resulting from defects in equipment in public school buildings and properties for the local school units at the lowest cost possible in keeping with the payment of cost of administration of this article, and the creation of adequate reserves to pay losses which may be incurred. The State Board of Education shall furnish to each county and city administrative unit annually and, at such times as changes may require, a certificate showing the amount of insurance carried on each item of insurable property. The said insurance shall not lapse but shall remain in force until the county or city board of education requests that said insurance be cancelled or until such property becomes uninsurable in the manner set out in G.S. 115-141. From time to time the local school authorities shall be notified as to the amount of the premiums required to be paid for said insurance and the amounts thereof shall be provided for in the annual budget of such schools. The tax levying authorities shall provide by taxation or otherwise a sum sufficient to pay the required premiums thereon.

The local school authorities shall within thirty (30) days from notice thereof pay to the State Board of Education the premiums on such insurance, and in the event that there are no funds on hand at such time with which to make said payment, the same shall be paid out of the first funds available to such school board. Delayed payments shall bear interest at the rate of six percent (6%) per annum. (1955, c. 1372, art. 16, s. 6.)

§ **115-140. Adjustment of losses; determination and report of appraisers; payment of amounts to treasurers of local units; disbursement of funds.**—In the event of loss or damage by fire, lightning, windstorm, hail, or explosions resulting from defects in equipment in public school buildings and properties for the local school units, "the Fund" shall pay the loss in the same proportion as the amount of insurance carried bore to the valuation of the property at the time it was insured, but not exceeding the amount which it would cost to repair or replace the property with material of like quality within a reasonable time after such loss, not in excess of the amount of insurance provided for said property, and not in excess of the amount of such loss which "the Fund" is required to pay in participation with fire insurance companies having policies of insurance in force on said properties at the time of the loss or damage, and "the Fund" shall not be liable for a greater proportion of any loss than the amount of insurance thereon shall bear to the whole insurance covering the property against the peril involved.

In the event of loss or damage by fire, lightning, windstorm, hail, or explosions resulting from defects in equipment in public school buildings and properties of the local school units, to the property insured, when an agreement as to the extent of such loss or damage cannot be arrived at between the State Board of Education and the local officials having charge of the said property, the amount of such loss or damage shall be determined by three appraisers; one to be named by the State Board of Education, one by the local governing board having charge of the property, and the two so appointed shall select a third—all of whom shall be disinterested persons, and qualified from experience to appraise and value such property: Provided, however, if the appraisers appointed by the State Board of Education and the local governing board shall fail for fifteen days to agree upon the third appraiser, then, on request of the State Board of Education or the local governing board having charge of the property, such third appraiser shall be selected by the resident judge of the superior court of the judicial district in which the property is located. The appraisers so named shall file their written report with the State Board of Education and with the local governing board having such property in charge. The costs of the appraisal shall be paid by "the Fund." Upon the determination of the loss by the appraisers, the State Board of Education shall pay the amount of such loss or damage to school property in the control of the county administrative unit to the county treasurer, and pay the amount of loss or damage to property of a city administrative unit to the treasurer of said unit upon proper warrant of the State Board of Education. Said funds shall be paid out by the treasurer of said units, as provided by this chapter for the disbursement of the funds of such unit. (1955, c. 1372, art. 16, s. 7.)

§ **115-141. Maintenance of inspection and engineering service; cancellation of insurance.**—The State Board of Education is authorized and empowered to maintain an inspection and engineering service deemed by it appropriate and necessary to reduce the hazards of fire in public school buildings insured in "the Fund" as hereinbefore provided, and to expend for such purpose not in excess of ten percent (10%) of the annual premiums collected from the local school authorities. The State Board of Education is hereby authorized and empowered to cancel any insurance on any school property when, in its opinion, because of dilapidation and depreciation such property is no longer insurable. Before cancellation, the local school board shall be given at least thirty (30) days' notice, and in the event said property can be restored to insurable condition, the State Board of Education may make such orders with respect to the continuance of such coverage as may be deemed proper: Provided, that the findings and results of the inspection of local school property by the agents of the Board shall be reported to county and city boards of education and to the board of county commissioners of such units as carry insurance with the State thirty (30) days before budget making time in order that all school property shall be properly taken care of and made safe from fire hazards. (1955, c. 1372, art. 16, s. 8.)

SUBCHAPTER VII. EMPLOYEES.

Article 17.

Principals' and Teachers' Employment and Contracts.

§ **115-142. Contracts of principals and teachers terminated at end of 1954-1955 term; employment thereafter.**—(a) The contracts of all principals and teachers now employed in the public schools of North Carolina are hereby terminated as of the end of the school term 1954-1955. County and city superintendents shall give each principal and teacher notice by mail of the termination of his contract, but the failure to give such notice shall not have the effect of continuing in force the contract of any principal or teacher beyond the end of the 1954-1955 school term.

(b) Any teacher or principal desiring election as teacher or principal in a particular administrative unit shall file his or her application in writing with the county or city superintendent of such unit. The application shall state the name and number of the certificate held, when the certificate expires, experience in teaching, if any, and the administratve unit in which the applicant last taught. It shall be the duty of all county and city boards of education to cause written contracts on forms to be furnished by the State Superintendent of Public Instruction to be executed by all teachers and principals before any salary vouchers shall be paid. The contracts of teachers and principals shall be made for the next succeeding school year or for the unexpired part of a current school year. No county or city board of education shall enter into a contract for the employment of more teachers, including vocational teachers, than are allotted to that particular administrative unit by the State Board of Education unless provision has been made for the payment of the salaries of such teachers from local funds. All contracts shall be subject to the condition that when the position for which any principal or teacher is employed is terminated the contract is likewise terminated. (1955, c. 664.)

When Contract Binding.—As to when teachers' contracts became binding obligations of county commissioners under former law, see Hampton v. Board of Educ., 195 N.C. 213, 141 S.E. 744 (1928).

Stated in Johnson v. Gray, 263 N.C. 507, 139 S.E.2d 551 (1965).

§ 115-143. Health certificate required for teachers and other school personnel.—Any person serving as county superintendent, city superintendent, supervisor, district principal, building principal, teacher, or any other employee in the public schools of the State, shall file in the office of the county or city superintendent each year, before assuming his or her duties, a certificate from the county physician, local health director, or other reputable physician, certifying that the said person does not have tuberculosis in the communicable form, or other communicable disease, or any disease, physical or mental, which would impair the ability of the said person to perform effectively his or her duties.

The examining physician shall make the aforesaid certificate on an examination form supplied by the State Superintendent of Public Instruction. The certificate shall be issued only after a physical examination has been made at the time of the certification, and such examination shall be in accordance with rules and regulations adopted by the State Superintendent of Public Instruction, with approval of the State Health Director, and such rules and regulations may include the requirement of an X-ray chest examination.

It shall be the duty of the county or city superintendent of the school in which the person is employed to enforce the provisions of this section.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and subject to a fine or imprisonment in the discretion of the court. (1955, c. 1372, art. 17, s. 1; 1957, c. 1357, ss. 2, 14.)

§ 115-144. Resignation of supervisor, principal or teacher.—After entering into a written contract, any teacher, principal, or supervisor desiring to resign or abrogate his contract must give not less than thirty days' notice in writing to the county or city superintendent by whom employed. In the event the resignation is submitted within less than thirty days prior to the opening of school, or if there is evidence that the contract has been wilfully breached, the employing authorities shall have authority to request the State Superintendent of Public Instruction, in his discretion, to revoke the employee's certificate for a period of one year. (1955, c. 1372, art. 17, s. 2.)

§ 115-145. Removal of principals and teachers; revocation of certificate.—The county and city boards of education and district committees, with the approval of the superintendent, may dismiss a principal or teacher for immoral or disreputable conduct or for failure to comply with the provisions of the contract. The superintendent of schools, with the approval of the committee or the board of education, has authority and it is his duty to dismiss a principal or teacher who has proven himself incompetent, or who wilfully refuses to discharge the duties of a public school principal or teacher, or who may be persistently neglectful of such duties. However, no principal or teacher shall be dismissed until charges have been filed in writing in the office of the superintendent and such principal or teacher given at least five days' notice in which time he shall have the opportunity to appear before the board of education or the district committee before whom the matter is being investigated. After a full and fair hearing the action of the board of education or the committee shall be final: Provided, the principal or teacher shall have the right to appeal to the county board of education if the action was taken by a district committee, and thereafter to the courts, or directly to the courts, if the action was taken by a county or city board of education.

In all cases where principals, teachers, and other certificated personnel have been dismissed by boards of education for immoral or disreputable conduct or have been convicted of a crime involving moral turpitude, the superintendent of schools shall notify, within thirty days of such dismissal or conviction, the State Superintendent of Public Instruction who shall have authority to revoke such principal's or teacher's certificate, if he deems such action justifiable. Persons whose certificates have been revoked by another state for immoral or disreputable conduct shall not be certificated in North Carolina and it shall be the duty of the State Superintendent of Public Instruction to notify all other states of any certificates which he shall revoke. (1955, c. 1372, art. 17, s. 3; 1965, c. 584, s. 13.)

Editor's Note.—The 1965 amendment rewrote the second paragraph.

Dismissal of Teacher Not Legally Appointed. — See Spruill v. Davenport, 178 N.C. 364, 100 S.E. 527 (1919).

Applied in Iredell County Bd. of Educ. v. Dickson, 235 N.C. 359, 70 S.E.2d 14 (1952).

§ 115-146. Duties of teachers generally; principals and teachers may use reasonable force in exercising lawful authority.—It shall be the duty of all teachers to maintain good order and discipline in their respective schools; to encourage temperance, morality, industry, and neatness; to promote the health of all pupils, especially of children in the first three grades, by providing frequent periods of recreation, to supervise the play activities during recess, and to encourage wholesome exercises for all children; to teach as thoroughly as they are able all branches which they are required to teach; to provide for singing in the school, and so far as possible to give instruction in the public school music; and to enter actively into the plans of the superintendent for the professional growth of the teachers. Teachers shall cooperate with the principal in ascertaining the cause of nonattendance of pupils that he may report all violators of the compulsory attendance law to the attendance officer in accordance with rules promulgated by the State Board of Education.

Principals and teachers in the public schools of this State may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order. No county or city board of education or district committee shall promulgate or continue in effect a rule, regulation or bylaw which prohibits the use of such force as is specified in this section. (1955, c. 1372, art. 17, s. 4; 1959, c. 1016.)

§ 115-147. Power to suspend or dismiss pupils.—The principal of a school shall have authority to suspend or dismiss any pupil who wilfully and persistently violates the rules of the school or who may be guilty of immoral or disreputable conduct, or who may be a menace to the school: Provided, any suspension or dismissal in excess of ten school days and any suspension or dismissal denying a pupil the right to attend school during the last ten school days of the school year shall be subject to the approval of the county or city superintendent. Every suspension or dismissal for cause shall be reported at once to the superintendent and to the attendance counselor, who shall investigate the cause and deal with the offender in accordance with rules governing the attendance of children in school. (1955, c. 1372, art. 17, s. 5; 1959, c. 573, s. 12; 1963, c. 1223, s. 5; 1965, c. 584, s. 14.)

Editor's Note.—The 1963 amendment substituted the word "counselor" for the word "officer" in the last sentence.

The 1965 amendment substituted "The principal of a school" for "A district principal, or a building principal" at the beginning of the section.

§ 115-148. Duty to make reports to superintendent; making false reports or records.—Every principal or teacher of a public school shall make such reports as are required by the boards of education, and the superintendent shall not approve the vouchers for the pay of principals or teachers until the required monthly and annual reports are made: Provided, that the superintendents may require teachers to make reports to the principals and principals to make reports to the superintendent: Provided further, that any superintendent, principal, teacher or other school employee of the public schools, who knowingly and wilfully makes or procures another to make any false report or records, requisitions, or payrolls, respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports required to be made to any board or officer in the performance of their duties, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the State Superintendent of Public Instruction.

When the governing board of any county or city administrative school unit shall have information that inaccurate school attendance records are being kept, the board concerned shall immediately investigate such inaccuracies and take necessary action to establish and maintain correct records and report its findings and action to the State Board of Education.

When it shall be found by the State Board of Education that inaccurate attendance records have been filed with the State Board of Education which resulted in an excess allotment of funds for teachers' salaries in any school unit in any school year, the school unit concerned may be required to refund to the State Board the amount allotted to said unit in excess of the amount an accurate attendance record would have justified. (1955, c. 1372, art. 17, s. 6; 1959, c. 1294.)

Principal's Duty to Keep Superintendent and Board Informed.—It is the duty of the principal to keep the superintendent and, through the superintendent, the board of education, informed about all phases of school operations. Johnson v. Gray, 263 N.C. 507, 139 S.E.2d 551 (1965).

Reports Qualifiedly Privileged.—The reports a principal makes in the performance of his duties are qualifiedly privileged. Johnson v. Gray, 263 N.C. 507, 139 S.E.2d 551 (1965).

§ 115-149. Care of school building.—It shall be the duty of every teacher and principal in charge of school buildings to instruct the children in the proper care of public property, and it is their duty to exercise due care in the protection of school property against damage, either by defacement of the walls and doors or any breakage on the part of the pupils, and if they shall fail to exercise a reasonable care in the protection of property during the day, they may be held financially responsible for all such damage, and if the damage is due to carelessness or negligence on the part of the teachers or principal, the superintendent may hold those in charge of the building responsible for the damage, and if it is not repaired before the close of a term, a sufficient amount may be deducted from their final vouchers to repair the damage for which they are responsible.

If any child in school shall carelessly or wilfully damage school property, the teacher or principal shall report the damage to the parent, and if the parent refuses to pay the cost of repairing the same, the teacher or principal shall report the offense to the superintendent of schools.

It shall be the duty of all principals to report immediately to their respective superintendents any unsanitary condition, damage to school property or needed repair. (1955, c. 1372, art. 17, s. 7.)

§ **115-150. Authority and duty of principal generally.**—The principal shall have authority to grade and classify pupils and exercise discipline over the pupils of the school. The principal shall make all reports to the county or city superintendent and give suggestions to teachers for the improvement of instruction. It shall be the duty of each teacher in a school to cooperate with the principal in every way possible to promote good teaching in the school and a progressive community spirit among its patrons.

It shall be the duty of the principal to conduct a fire drill during the first week after the opening of school and thereafter at least one fire drill each school month, in each building in his charge, where children are assembled. Fire drills shall include all pupils and school employees, and the use of various ways of egress to simulate evacuation of said buildings under various conditions, and such other regulations as shall be prescribed for fire safety by the Commissioner of Insurance, the Superintendent of Public Instruction and the State Board of Education. A copy of such regulations shall be kept posted on the bulletin board in each building.

It shall be the duty of each principal to inspect each of the buildings in his charge at least twice each month during the regular school session. This inspection shall include cafeterias, gymnasiums, boiler rooms, storage rooms, auditoriums and stage area as well as all class rooms. This inspection shall be for the purpose of keeping the buildings safe from the accumulation of trash and other fire hazards.

It shall be the duty of the principal to file a written report once each month during the regular school session with his local school committee, and two copies of this report with the superintendent of his administrative unit, one copy of which shall be transmitted by the superintendent to the chairman of the county or city board of education. This report shall state the date the last fire drill was held, the time consumed in evacuating each building, that the inspection has been made as prescribed by law and such other information as is deemed necessary for fire safety by the Commissioner of Insurance, the Superintendent of Public Instruction and the State Board of Education. (1955, c. 1372, art. 17, s. 8; 1957, c. 843; 1959, c. 573, s. 13; 1965, c. 584, s. 15.)

Editor's Note.—The 1965 amendment rewrote the first paragraph.

By virtue of Session Laws 1943, c. 170, "Commissioner of Insurance" has been substituted for "Insurance Commissioner."

Stated in Johnson v. Gray, 263 N.C. 507, 139 S.E.2d 551 (1965).

§ **115-150.1. Duty of principal regarding fire hazards.**—The principal of every public school in the State shall have the following duties regarding fire hazards during periods when he is in control of a school:

(1) Every principal shall make certain that all corridors, halls, and tower stairways which are used for exits shall always be kept clear and that nothing shall be permitted to be stored or kept in corridors or halls, or in, on or under stairways that could in any way interfere with the orderly exodus of occupants. The principal shall make certain that all doors used for exits shall be kept in good working condition. During the occupancy of the building or any portion thereof by the public or for school purposes, the principal shall make certain that all doors necessary for prompt and orderly exodus of the occupants are kept unlocked.

(2) Every principal shall make certain that no electrical wiring shall be installed within any school building or structure or upon the premises and that no alteration or addition shall be made in any existing wir-

ing, except with the authorization of the superintendent. Any such work shall be performed by a licensed electrical contractor, or by a maintenance electrician regularly employed by the board of education and approved by the Commissioner of Insurance.

(3) Every principal shall make certain that combustible materials necessary to the curriculum and for the operation of the school shall be stored in a safe and orderly manner.

(4) Every principal shall make certain that all supplies, such as oily rags, mops, etc., which may cause spontaneous combustion, shall be stored in an orderly manner in a well-ventilated place.

(5) Every principal shall make certain that all trash and rubbish shall be removed from the school building daily. No trash or rubbish shall be permitted to accumulate in a school attic, basement or other place on the premises.

(6) Every principal shall cooperate in every way with the authorized building inspector, electrical inspector, county fire marshal or other designated person making the inspections required by G.S. 115-150.2.

It shall further be the duty of the principal to bring to the attention of the local superintendent of schools the failure of the building inspector, electrical inspector, county fire marshal, or other person to make the inspections required by G.S. 115-150.2. It shall further be the duty of the principal to call to the attention of the superintendent of schools all recommendations growing out of the inspections, in order that the proper authorities can take steps to bring about the necessary corrections. (1957, c. 844; 1959, c. 573, s. 14.)

§ 115-150.2. Inspection of schools for fire hazards; reports; rules and regulations; removal or correction of hazard.—Every public school building in the State shall be inspected every four months in accordance with the following plan: Provided, that the periodic inspections herein required shall be at least 90 days apart:

(1) Each school building shall be inspected to make certain that none of the fire hazards enumerated in subdivisions (1), (3), (4) and (5) of G.S. 115-150.1 exist, and to insure that all heating, mechanical electrical, gas, and other equipment and appliances are properly installed and maintained in a safe and serviceable manner as prescribed by the North Carolina Building Code. Following each inspection, the person or persons making the inspection shall furnish to the principal of the school a written report of conditions found during inspection, upon forms furnished by the Commissioner of Insurance, and the person or persons making the inspection shall also furnish a copy of the report to the superintendent of schools; the superintendent shall keep such copy on file for a period of three years. In addition to the periodic inspections herein required, any alterations or additions to existing school buildings or to school building utilities or appliances shall be inspected immediately following completion.

(2) The board of county commissioners of each county shall designate the person or persons to make the inspections and reports required by subdivision (1) of this section. The board may designate any city or county building inspector, any city or county fire prevention bureau, any city or county electrical inspector, the county fire marshal, or any other qualified person or persons, but no person shall make any electrical inspection unless he shall be qualified as required by G.S. 160-122. Nothing in G.S. 115-150.1 to 115-150.3 shall be construed as prohibiting two or more counties from designating the same person or persons to make the inspections and reports required by subdivision (1) of this section. The board of county commis-

sioners shall compensate or provide for the compensation of the person or persons designated to make all such inspections and reports. The board of county commissioners may make appropriations in the general fund of the county to meet the costs of such inspections, or in the alternative the board may add appropriations to the school current expense fund to meet the costs thereof: Provided, that if appropriations are added to the school current expense fund, such appropriations shall be in addition to and not in substitution of existing school current expense appropriations.

(3) It shall be the duty of the State Commissioner of Insurance, the State Superintendent of Public Instruction, and the State Board of Education to prescribe any additional rules and regulations which they may deem necessary in connection with such inspections and reports for the reduction of fire hazards and protection of life and property in public schools.

(4) It shall be the duty of each principal to make certain that all fire hazards, called to his attention in the course of the inspections and reports required by subdivision (1) of this section, are immediately removed or corrected, if such removal or correction can be accomplished by the principal. If such removal or correction cannot be accomplished by the principal, it shall be the duty of the principal to bring the matter to the attention of the superintendent.

(5) It shall be the duty of each superintendent of schools to make certain that all fire hazards, called to his attention in the course of the inspections and reports required by subdivision (1) of this section and not removed or corrected by the principals as required by subdivision (4) of this section, are removed or corrected, if such removal or correction can be brought about within the current appropriations available to the superintendent. Where any removal or correction of a hazard will require the expenditure of funds in excess of current appropriations, it shall be the duty of the superintendent to bring the matter to the attention of the appropriate board of education, and the board of education in turn shall bring the same to the attention of the board of county commissioners, in order that immediate steps be taken, within the framework of existing law, to remove or correct the hazard. (1957, c. 844; 1959, c. 573, s. 14.)

§ **115-150.3. Liability for failure to perform duties imposed by §§ 115-150 to 115-150.2.**—Any person wilfully failing to perform any of the duties imposed by G.S. 115-150, 115-150.1 or 115-150.2, shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars ($500.00) in the discretion of the court. (1957, c. 844; 1959, c. 573, s. 14.)

§ **115-151. Salary increments for experience to teachers, principals and superintendents in armed and auxiliary forces.**—The State Board of Education, in fixing the State standard salary schedule of teachers, principals and superintendents as authorized by law, shall provide that teachers, principals and superintendents who entered the armed or auxiliary forces of the United States after September sixteenth, one thousand nine hundred and forty, and who left their positions for such service, shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the position of teachers, principals, or superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States. (1955, c. 1372, art. 17, s. 9.)

ARTICLE 18.

Certification and Salaries of Employees; Workmen's Compensation.

§ 115-152. Certificate prerequisite to employment.—All teachers, supervisors and other professional personnel employed in the public schools of the State, or in schools receiving public funds, shall be required to hold certificates in accordance with the law, and no contract for employment shall be valid until the certificate is secured: Provided, that nothing herein shall prevent the employment of temporary personnel under such rules as the State Board of Education may prescribe: Provided, further, that no person shall be employed to teach who is under eighteen years of age. (1955, c. 1372, art. 18, s. 1.)

§ 115-153. Certifying and regulating the grade and salary of teachers; furnishing to county or city boards available personnel information.—The State Board of Education shall have entire control of certificating all applicants for teaching, supervisory, and professional positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates, and shall determine and fix the salary for each grade and type of certificate which it authorizes.

Upon request the State Board of Education and the State Department of Public Instruction shall furnish to any county or city board of education any and all available personnel information relating to certification, evaluation and qualification including, but not limited to, semester hours or quarterly hours completed, graduate work, grades, scores, etc., that are on that date in the files of the State Board of Education or Department of Public Instruction. (1955, c. 1372, art. 18, s. 2; 1965, c. 584, s. 20.1.)

Editor's Note. — The 1965 amendment added the second paragraph.

§ 115-153.1. Authority of county and city boards of education to purchase annuity contracts for employees.—Notwithstanding the provisions of this chapter for the adoption of State and local salary schedules for the pay of teachers, principals, superintendents, and other school employees, county and city boards of education may enter into annual contracts with any employee of such board which provide for a reduction in salary below the total established compensation or salary schedule for a term of one (1) year. The county or city board of education shall use the funds derived from the reduction in the salary of the employee to purchase a nonforfeitable annuity contract for the benefit of said employee. An employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity contract. Funds used by the county and city boards of education for the purchase of an annuity contract shall not be in lieu of any amount earned by the employee before his election for a salary reduction has become effective.

The agreement for salary reductions referred to herein shall be effected under any necessary regulations and procedures adopted by the State Board of Education and on forms prepared by the State Board of Education.

Notwithstanding any other provisions of this section, the amount by which the salary of any employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes. (1963, c. 582.)

§ 115-154. Local approval of certificate required. — No certificate issued by the board shall be valid until approved and signed by the superintendent of the administrative unit in which the holder of said certificate resides, or contracts to teach, and the certificate when so approved shall be of state-wide validity. Should any superintendent refuse to approve and sign any such certificate, he shall notify the State Board of Education and state in writing the reasons for such refusal. The said Board shall have the right, upon appeal by the holder of said certificate, to review and investigate and finally determine the matter. (1955, c. 1372, art. 18, s. 3.)

§ **115-155. Employment of persons without certificate unlawful; salaries not paid.**—It shall be unlawful for any board of education or school committee to employ or to keep in service any teacher, supervisor, or other professional school personnel who does not hold a certificate in compliance with the provisions of law or in accordance with the regulations of the State Board of Education governing emergency substituted personnel.

The county or city superintendent, or other official, is forbidden to approve any voucher for salary for any personnel employed in violation of the provisions of this section and the treasurer of the county or of the city schools is hereby forbidden to pay out of the school funds the salary of any such person. (1955, c. 1372, art. 18, s. 4.)

§ **115-156. Colleges to aid as to certificates.**—Each and every college or university of the State is hereby authorized to aid public school teachers or prospective teachers in securing, raising, or renewing their certificates, in accordance with the rules and regulations of the State Board of Education. (1955, c. 1372, art. 18, s. 5.)

§ **115-157. Pay of school officials and other employees.** — Teachers and principals shall be paid promptly when their salaries are due, provided they have been properly elected, have executed their contracts, and deposited a copy of the same with their respective boards of education, and have taught a school month of twenty days, or for a less number of days when their employment is terminating. All such teachers and principals employed by any administrative unit or any school district, who are to be paid from local funds, shall be paid promptly as provided by law and as State allotted teachers and principals are paid.

Public school employees paid from State funds shall be paid as follows:

Salary vouchers for the payment of all State allotted teachers, principals, and others employed for the school term shall be issued each month to such persons as are entitled to same. The salaries of superintendents and others employed on an annual basis shall be paid per calendar month: Provided, that teachers may be paid in twelve equal monthly installments in such administrative units as shall request the same of the State Board of Education on or before October first of each school year. Before such request shall be filed, it shall be approved by the board of education, the superintendent, and a majority of the teachers in said administrative unit. The payment of the annual salary in twelve installments instead of nine shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said administrative unit; nor shall such payment apply to any teacher who is employed for a period of less than nine months. Classified principals in the public schools of the State shall be employed for a term of ten (10) months and shall be paid on the basis of ten (10) months' service: Provided, that the State Board of Education may in its discretion and under such rules and regulations as it may prescribe, provide for the payment of the salaries of classified principals and supervisors in twelve equal monthly installments in such administrative units as shall request the same.

The State Board of Education is authorized to prescribe what portion of said extra month shall apply to services rendered before the opening of the school term and after the closing of the school year and to fix and regulate the duties of principals during said extra month.

The State Board of Education may, in its discretion and under such rules and regulations as it may prescribe, provide for the payment of the salaries of regular State allotted teachers in ten (10) equal monthly payments. It shall also provide for the salaries of vocational teachers in such monthly payments as may be desirable and in accordance with rules and regulations prescribed for the operation of the vocational program and in accordance with federal laws and regulations relating to such funds.

In any administrative unit which shall request the same of the State Board of Education on or before August 1 of each school year, teachers may be paid in nine equal payments on the basis of service for nine school months, such payments to be made on the same fixed date in each calendar month during the school term as determined by the county or city board of education: Provided, that the county or city board of education shall sustain any loss by reason of an overpayment to any teacher or principal. Principals shall be paid during the school term on the same date as the teachers are paid.

All of the foregoing provisions of this section shall be subject to the requirements that if the Old Age and Survivors Insurance Program of the federal Social Security Act is coordinated with the Teachers' and State Employees' Retirement System pursuant to enactments of the General Assembly of 1955, then and in that event at least fifty dollars ($50.00) or other minimum amount required by federal Social Security Laws, of the compensation of every teacher, principal or other school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for federal Social Security coverage, shall be paid in each of the four quarters of the calendar year. (1955, c. 1372, art. 18, s. 6; 1961, c. 1085.)

Approval of Vouchers. — Mandamus is the proper action to compel a superintendent to approve a teacher's voucher. The claim is not a money demand. If there are any reasons why the vouchers should not be signed, they are matters to be heard by the court, but the signing by the superintendent is a mere ministerial duty. Ducker v. Venable, 126 N.C. 447, 35 S.E. 818 (1900).

§ 115-158. Authority of superintendent to issue salary vouchers. —The authority for a superintendent to issue vouchers for the salary of all school employees, whether paid from State or local funds, shall be a monthly payroll, prepared on forms furnished by the State Board of Education and containing all information required by the controller of the State Board of Education. This monthly payroll shall be signed by the principal of the school. If any voucher so drawn is chargeable against district funds, the amount so charged and the district to which said amount is charged shall be specified on the voucher.

No deductions shall be made from salaries of teachers of vocational agriculture and home economics whose salaries are paid in part from State and federal vocational funds while in attendance upon community, county and State meetings called for the specific purpose of promoting the agricultural interests of North Carolina, when such attendance is approved by the superintendent of the administrative unit and the State Director of Vocational Education. (1955, c. 1372, art. 18, s. 7; 1965, c. 584, s. 16.)

Editor's Note.—The 1965 amendment deleted "in city administrative units, and in county administrative units by the principal and the chairman of the local committee" at the end of the second sentence.

§ 115-159. Cashing vouchers and payment of sums due on death of school employees. — In the event of the death of any superintendent, teacher, principal, or other school employee, to whom payment is due for or in connection with services rendered by such person or to whom has been issued any uncashed voucher for or in connection with services rendered, when there is no administration upon the estate of such person, such voucher may be cashed by the clerk of the superior court of the county in which such deceased person resided, or a voucher due for such services may be made payable to such clerk, who will treat such sums as a debt owed to the intestate under the provisions of G. S. 28-68. (1955, c. 1372, art. 18, s. 8; 1965, c. 395.)

Editor's Note. — The 1965 amendment rewrote the section.

§ **115-160. Workmen's Compensation Act applicable to school employees.** — The provisions of the Workmen's Compensation Act shall be applicable to all school employees, and the State Board of Education shall make such arrangements as are necessary to carry out the provisions of the Workmen's Compensation Act as are applicable to such employees as are paid from State school funds. Liability of the State for compensation shall be confined to school employees paid by the State from State school funds for injuries or death caused by accident arising out of and in the course of their employment in connection with the State operated nine months' school term. The State shall be liable for said compensation on the basis of the average weekly wage of such employees as defined in the Workmen's Compensation Act, whether all of said compensation for the nine months' school term is paid from State funds or in part supplemented by local funds. The State shall also be liable for workmen's compensation for all school employees employed in connection with the teaching of vocational agriculture, home economics, trades and industries, and other vocational subjects, supported in part by State and federal funds, which liability shall cover the entire period of service of such employees. The county and city administrative units shall be liable for workmen's compensation for school employees, including lunchroom employees, whose salaries or wages are paid by such local units from local or special funds. Such local units are authorized and empowered to provide insurance to cover such compensation liability and to include the cost of such insurance in their annual budgets.

The provisions of this section shall not apply to any person, firm or corporation making voluntary contributions to schools for any purpose, and such person, firm or corporation shall not be liable for the payment of any sum of money under this subchapter. (1955, c. 1372, art. 18, s. 9.)

The expression "arising out of and in the course of their employment," as used in this section, carries the same meaning and calls for the same interpretation and application as does the similar expression appearing in the text of the Workmen's Compensation Act, § 97-2, subdivision (6). Sweatt v. Rutherford County Bd. of Educ., 237 N.C. 653, 75 S.E.2d 738 (1953).

Murder of high school principal by student held not to arise out of school employment. Sweatt v. Rutherford County Bd. of Educ., 237 N.C. 653, 75 S.E.2d 738 (1953).

Janitor Injured During Employment by Municipal Board.—Findings supported the conclusion of law that a janitor was injured during his employment by the municipal board of education and that the municipal board and its carrier were solely liable for compensation for his injury. Casey v. Board of Educ., 219 N.C. 739, 14 S.E.2d 853 (1941).

Article 18A.

Payroll Savings Plan for Purchase of United States Bonds.

§ **115-160.1. Authority of administrative school unit to establish plan.**—The State Board of Education may authorize any county or city administrative school unit within the State to establish a voluntary payroll deduction plan for the purchase of United States Savings Bonds by the employees of such county or city administrative unit, and to set up the necessary machinery for carrying out the purposes of this article. (1957, c. 751, s. 1.)

§ **115-160.2. Agreement between employee and board of education.**—Any employee of any county or city administrative school unit within the State may enter into a written agreement with the county or city board of education by which he is employed and which has adopted such payroll savings plan to authorize deductions from his salary of certain designated sums to be invested in United States Savings Bonds of the kind and type specified in such agreement. (1957, c. 751, s. 2.)

§ **115-160.3. Payroll deductions and investment in United States Savings Bonds.** — Upon execution of such agreement by an employee of any county or city administrative school unit the county or city board of education employing such person is authorized and empowered to deduct the sum specified in said agreement from the weekly or monthly salary of such employee and to show deductions on all payrolls in a manner similar to that in which withholding tax and retirement are shown. Such sums shall be deposited monthly with a depository authorized by the United States Treasury Department. The sums so deposited shall be held by the depository until sufficient moneys have accumulated to the credit of each individual sufficient to purchase a bond, and such sums shall be invested in United States Savings Bonds for and on behalf of such employee, and the bonds shall be delivered to the employee as soon as practicable. Provided that no coercion shall be exercised to require any person to participate in such plan. (1957, c. 751, s. 3.)

§ **115-160.4. Cancellation of agreement; refund to employee.** — Such agreement may be cancelled by the employee executing the same by giving written notice to the county or city superintendent of schools who is ex officio secretary to the county or city board of education, not later than the 15th day of the month in which he desires such agreement to be terminated; and the county or city board of education may cancel any agreement herein provided for upon giving ten (10) days' written notice to the affected employee. Upon the termination of the agreement, the depository is hereby authorized and directed to refund any amount of money held for such employee. (1957, c. 751, s. 4.)

SUBCHAPTER VIII. PUPILS.

Article 19.

Census, Admissions and Attendance.

§ **115-161. Continuous school census.** — The State Board of Education shall adopt such rules and regulations as may be necessary for taking a complete census of the school population and for installing and keeping in the office of the county and city superintendent in each school administrative unit of the State a continuous census of the school population. The cost of taking and keeping the census shall be included in the budget and shall be paid out of the current expense fund. If any parent, guardian, or other person having the custody of a child, refuses to give any properly authorized census taker the necessary information to enable such person to obtain an accurate and correct census, or shall knowingly and wilfully make any false statement relative to the age or the mental or physical condition of any child, he shall be deemed guilty of a misdemeanor and upon conviction shall be fined not to exceed twenty-five dollars ($25.00) or imprisoned not to exceed thirty days, in the discretion of the court. (1955, c. 1372, art. 19, s. 1.)

Cited in Fremont City Bd. of Educ. v. Wayne County Bd. of Educ., 259 N.C. 280, 130 S.E.2d 408 (1963).

§ **115-162. Age requirement and time of enrollment.** — Children to be entitled to enrollment in the public schools for the school year 1955-1956, and each year thereafter, must have passed the sixth anniversary of their birth before October first of the year in which they enroll, and must enroll during the first month of the school year: Provided, that if a particular child has already been attending school in another state in accordance with the laws or regulations of the school authorities of such state before moving to and becoming a resident of North Carolina, such child will be eligible for enrollment in the schools of this State regardless of whether such child has passed the sixth anniversary of his birth before October first. The State Board of Education is hereby authorized and empowered, in its discretion, to change the above dates of October first. The principal of any public school shall have the authority to require the parents of any child presented for admission for the first time to such school to furnish a certified copy of the birth certificate of such child, which shall be furnished without charge by the register of deeds of the county having on file the record of the birth of such child, or other satisfactory evidence of date of birth. (1955, c. 1372, art. 19, s. 2.)

§ 115-163. Pupils residing in school district shall have advantages of public schools.—All pupils residing in a school district or attendance area, and who have not been removed from school for cause, shall be entitled to all the privileges and advantages of the public schools of such district or attendance area in such school buildings to which they are assigned by county and city boards of education: Provided, that wherever pupils from nontax units, districts, or attendance areas, are assigned to a school in a tax unit, district, or attendance area, the assignment shall be for only the current school year, unless satisfactory agreements are reached between all units, districts, or attendance areas concerned: Provided, further, that pupils residing in one administrative unit may be assigned either with or without the payment of tuition to a school located in another administrative unit upon such terms and conditions as may be agreed in writing between the boards of education of the administrative units involved and entered upon the official records of such boards: Provided, further, that the assignment of pupils living in one administrative unit or district to a school located in another administrative unit or district, either with or without the payment of tuition, shall have no effect upon the right of the administrative unit or district to which said pupils are assigned to levy and collect any supplemental tax heretofore or hereafter voted in such administrative unit or district: Provided, further, the boards of education of adjacent administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

Unless otherwise assigned by the county or city board of education, the following pupils are entitled to attend the schools in the district or attendance area in which they reside:

(1) All pupils of the district or attendance area who have not completed the prescribed course for graduation in the high school.
(2) All pupils whose parents have recently moved into the unit, district, or attendance area for the purpose of making their legal residence in the same.
(3) Any pupil or pupils living with either father, mother or guardian who has made his or her permanent home within the district. (1955, c. 1372, art. 19, s. 3.)

State Board No Longer Has Authority to Assign Children from One Unit to Another.—By virtue of the comprehensive rewriting of this chapter by c. 1372, Sess. Laws of 1955, the State Board no longer has the authority formerly vested in it to assign children from one administrative unit or district to another for the school term. In re Assignment of School Children, 242 N.C. 500, 87 S.E.2d 911 (1955).

§ 115-164. Children at orphanages permitted to attend public schools.—Children living in and cared for and supported by an institution established or incorporated for the purpose of rearing and caring for orphan children shall be considered legal residents of the administrative unit in which the institution is located, and a part or all of said orphan children shall be permitted to attend the public school or schools of their administrative unit: Provided, that the provisions of this section shall be permissive only, and shall not be mandatory. (1955, c. 1372, art. 19, s. 4.)

Purpose of Trust Not Affected by Section.—A trust fund created by will for the purpose of educating through high school a girl inmate of an orphan asylum to be chosen by the board of trustees from time to time did not fall into the residuary clause for failure of the purpose of the trust on the ground that the State educated orphan children through high school without charge under the provisions of a statute similar to this section, since the statute made the payment for the education of the children in orphan asylums permissive only. Humphrey v. Board of Trustees, 203 N.C. 201, 165 S.E. 547 (1932).

§ **115-165. Children not entitled to attend public schools.**—A child so severely afflicted by mental, emotional, or physical incapacity as to make it impossible for such child to profit by instruction given in the public schools shall not be permitted to attend the public schools of the State. In case such child is presented for enrollment in the public schools, it shall be the duty of the county or city superintendent of schools to make, or cause to be made by qualified psychologists and/or medical authorities, an examination to determine whether said child can profit by attending the public schools. Upon receipt of a report indicating that the child cannot profit from instruction given in the public schools the county or city superintendent of schools is hereby authorized to exclude said child from the public schools. In all such cases in which a child is excluded from schools, a complete record of the transaction shall be filed in the office of the county or city superintendent, the office of the county director of public welfare, and the office of the county health officer, and shall be available to all parties concerned. If the parent or guardian of such a child persists in forcing his attendance after such report has determined that the child should not attend the public schools, he shall be guilty of a misdemeanor and upon conviction shall be punished in the discretion of the court. (1955, c. 1372, art. 19, s. 5; 1961, c. 186; 1965, c. 584, s. 17.)

Editor's Note. — The 1965 amendment rewrote the section.

ARTICLE 20.

General Compulsory Attendance Law.

§ **115-166. Parent or guardian required to keep child in school; exceptions.**—Every parent, guardian or other person in this State having charge or control of a child between the ages of seven and sixteen years shall cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned and in which he is enrolled shall be in session; provided, this requirement shall not apply with respect to any child when the board of education of the administrative unit in which the child resides finds that:

(1) Such child is now assigned against the wishes of his parent or guardian, or person standing in loco parentis to such child, to a public school attended by a child of another race and it is not reasonable and practicable to reassign such child to a public school not attended by a child of another race; and

(2) It is not reasonable and practicable for such child to attend a private nonsectarian school, as defined in article 35 of this chapter.

The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse a child temporarily from attendance on account of sickness or other unavoidable cause which does not constitute unlawful absence as defined by the State Board of Education. The term "school" as used herein is defined to embrace all public schools and such nonpublic schools as have teachers and curricula that are approved by the county or city superintendent of schools or the State Board of Education.

All nonpublic schools receiving and instructing children of a compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children and maintain such minimum curriculum standards as are required of public schools; and attendance upon such schools, if the school refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district to which the child shall be assigned: Provided, that instruction in a nonpublic school shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term. (1955, c. 1372, art. 20, s. 1; 1956, Ex. Sess., c. 5; 1963, c. 1223, s. 6.)

Editor's Note.—The 1963 amendment rewrote the last two paragraphs.

For article on North Carolina school legislation, 1956, see 35 N.C.L. Rev. 1 (1956).

Indictment for Noncompliance.—For a conviction of failure to keep children in school it is necessary for the indictment to allege, and the State offer evidence tending to show, not only that the parent or guardian of the children within the described age had failed or refused to send them to the public school within the district, but also that such child or children had not been sent to attend school periodically for a period equal to the time which the public school in the district in which they reside shall be in session. State v. Johnson, 188 N.C. 591, 125 S.E. 183 (1924).

Where the indictment does not sufficiently allege the failure of the parent or guardian to send the child to another than the public school in the district, an amendment may be allowed to cure the defect. State v. Johnson, 188 N.C. 591, 125 S.E. 183 (1924).

An indictment charging a parent with unlawful and willfully failing to cause his children, between the ages of 8 and 14 years, to attend the public schools of the district of his and the children's residence, is defective in not observing the distinction that the parent, having the custody of his children, may have them attend private schools for the required period, and no conviction may be had under the charge set out in the indictment. State v. Lewis, 194 N.C. 620, 140 S.E. 434 (1927).

Burden.—Where the indictment is defective in failing to charge that a parent or guardian had also failed to send the child or children to another than the district school, and the State offers no evidence in respect to it, it is not required that the parent or guardian offer evidence to show that he had complied with the proviso of the statute; and an instruction of the court to the jury placing the burden upon the defendant to so show, is reversible error. State v. Johnson, 188 N.C. 591, 125 S.E. 183 (1924).

Parent Asserting Rights under Vaccination Statute.—Where it appeared that the defendant did everything within his power to keep his child in school, except to waive what he believed to be his rights under § 130-93.1 (h), so long as the defendant, in good faith, was asserting his rights as he conceived them under the statute, he was not subject to conviction under this section. State v. Miday, 263 N.C. 747, 140 S.E.2d 325 (1965).

Cited in Fremont City Bd. of Educ. v. Wayne County Bd. of Educ., 259 N.C. 280, 130 S.E.2d 408 (1963).

§ 115-167. State Board of Education to make rules and regulations; method of enforcement. — It shall be the duty of the State Board of Education to formulate such rules and regulations as may be necessary for the proper enforcement of the provisions of this article. The Board shall prescribe what shall constitute unlawful absence, what causes may constitute legitimate excuses for temporary nonattendance due to physical or mental inability to attend, and under what circumstances teachers, principals, or superintendents may excuse pupils for nonattendance due to immediate demands of the farm or the home in certain seasons of the year in the several sections of the State. It shall be the duty of all school officials to carry out such instructions from the State Board of Education, and any school official failing to carry out such instructions shall be guilty of a misdemeanor: Provided, that the compulsory attendance law herein prescribed shall not be in force in any city or county that has a higher compulsory attendance feature than that provided herein. (1955, c. 1372, art. 20, s. 2; 1963, c. 1223, s. 7.)

Editor's Note. — The 1963 amendment substituted "unlawful absence" for the word "truancy" in the second sentence.

§ 115-168. Attendance counselors; reports; prosecutions. — The State Superintendent of Public Instruction shall prepare such rules and procedures and furnish such blanks for teachers and other school officials as may be necessary for reporting such case of unlawful absence or lack of attendance to the attendance counselor of the respective administrative units. Such rules shall provide, among other things, for a notification in writing, to the person responsible for the nonattendance of any child, that the case is to be reported to the attendance counselor of the administrative unit unless the law is complied with immediately. Upon recommendation of the superintendent, county and city boards of education may employ attendance counselors and such counselors shall have authority to report and verify on oath the necessary criminal warrants or other documents for the prosecutions of violations of this article: Provided, that school administrative units shall provide in their local operating budgets for travel and necessary office expense for such attendance counselors as may be employed through State and/or local funds. The State Board of Education shall determine the formula for allocating attendance counselors to the various county and city administrative units, establish their qualifications, and shall develop a salary schedule which shall be applicable to such personnel; provided that persons now employed by county and city boards of education as attendance officers shall be deemed qualified as attendance counselors under the terms of this article, subject to the approval of said county and city boards of education; provided further, that until qualified persons become available, county and city boards of education are hereby authorized to employ as attendance counselors persons not determined by the State Board of Education to be qualified under the terms of this article. (1955, c. 1372, art. 20, s. 3; 1957, c. 600; 1961, c. 186; 1963, c. 1223, s. 8.)

Local Modification. — Graham: 1957, c. 261.

Editor's Note. — The 1963 amendment rewrote this section.

§ 115-169. Violation of law; penalty. — Any parent, guardian or other person violating the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be liable to a fine of not less than five dollars ($5.00) nor more than twenty-five dollars ($25.00), and upon failure to pay such fine, the said parent, guardian or other person shall be imprisoned not exceeding thirty days in the county jail. (1955, c. 1372, art. 20, s. 4.)

Local Modification. — Jackson: 1959, c. 94.

Imposition and Nonpayment of Fine Prerequisite to Prison Sentence.—Where there was nothing in the record tending to show that the court below had imposed a fine on defendant for failure to send his child to school, and by reason of his failure to pay such fine a prison sentence was imposed, a prison sentence imposed under this section was without sanction of law. State v. Miday, 263 N.C. 747, 140 S.E.2d 325 (1965).

§ 115-170. Investigation and prosecution by attendance counselor. —The school attendance counselor shall investigate all violators of the provisions of this article. The reports of unlawful absence required to be made by teachers and principals to the attendance counselor shall, in his hands, in case of any prosecution, constitute prima facie evidence of the violation of this article and the burden of proof shall be upon the defendant to show the lawful attendance of the child or children upon an authorized school. (1955, c. 1372, art. 20, s. 5; 1961, c. 186; 1963, c. 1223, s. 9.)

Editor's Note. — The 1963 amendment deleted the former references to "county director of public welfare" and "truant officer provided by law." It also substituted "counselor" for "officer" in the first and second sentences.

§ 115-171. Investigation as to indigency of child. — If affidavit shall be made by the parent of a child or by any other person that any child between the ages of seven and sixteen years is not able to attend school by reason of necessity to work or labor for the support of itself or the support of the family, then the attendance counselor shall diligently inquire into the matter and bring it to the attention of some court allowed by law to act as a juvenile court, and said court shall proceed to find whether as a matter of fact such parents, or persons standing in loco parentis, are unable to send said child to school for the term of compulsory attendance for the reasons given. If the court shall find, after careful investigation, that the parents have made or are making bona fide effort to comply with the compulsory attendance law, and by reason of illness, lack of earning capacity, or any other cause which the court may deem valid and sufficient, are unable to send said child to school, then the court shall find and state what help is needed for the family to enable the attendance law to be complied with. The court shall transmit its findings to the director of public welfare of the county or city in which the case may arise for such welfare officer's consideration and action. (1955, c. 1372, art. 20, s. 6; 1961, c. 186; 1963, c. 1223, s. 10.)

Editor's Note. — The 1963 amendment substituted "attendance counselor" for "attendance officer" in the first sentence.

§ 115-172. Deaf and blind children to attend school; age limits; minimum attendance. — Every deaf and every blind child of sound mind in North Carolina who shall be qualified for admission into a State school for the deaf or the blind shall attend a school for the deaf or the blind for a term of nine months each year between the ages of six and eighteen years. Parents, guardians, or custodians of every such blind or deaf child between the ages of six and eighteen years shall send, or cause to be sent, such child to some school for the instruction of the blind or deaf as herein provided: Provided, that the board of directors of any school for the blind or deaf may exempt any such child from attendance at any session or during any year, and may discharge from their custody any such blind or deaf child whenever such discharge seems necessary or proper. Whenever a blind or deaf child shall reach the age of eighteen years and still unable to become self-supporting because of his defects, such child shall continue in said school until he reaches the age of twenty-one, unless he becomes self-supporting sooner. (1955, c. 1372, art. 20, s. 7.)

§ 115-173. Parents, etc., failing to send deaf child to school guilty of misdemeanor; proviso.—The parents, guardians, or custodians of any deaf children between the ages of six and eighteen years failing to send such deaf child or children to some school for instruction, as provided herein, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court, for each year said deaf child is kept out of school, between the ages herein provided: Provided, that this section shall not apply to or be enforced against the parent, guardian, or custodian of any deaf child until such time as the superintendent of any school for the instruction of the deaf, by and with the approval of the executive committee of such institution, shall in his and their discretion serve written notice on such parent, guardian, or custodian, directing that such child be sent to the institution whereof they have charge. (1955, c. 1372, art. 20, s. 8.)

§ 115-174. Parents, etc., failing to send blind child to school guilty of misdemeanor; provisos. — The parents, guardians, or custodians of any blind child or children between the ages of six and eighteen years failing to send such child or children to some school for the instruction of the blind shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court, for each year that such child or children shall be kept out of school between the ages specified: Provided,

(1) That this section not be enforced against the parents, guardians, or custodians of any blind child until such time as the authorities of some school for the instruction of the blind shall serve written notice on

such parents, guardians, or custodians directing that such child be sent to the school whereof they have charge; and

(2) That the authorities of the State School for the Blind and the Deaf shall not be compelled to retain in their custody or under their instruction any incorrigible person or persons of confirmed immoral habits. (1955, c. 1372, art. 20, s. 9.)

§ **115-175. Superintendent to report defective children.**—It shall be the duty of the county and city superintendents to report through proper legal channels, the names and addresses of parents, guardians, or custodians of deaf, mute, blind and feebleminded children to the principal of the institution provided for each. (1955, c. 1372, art. 20, s. 10.)

Article 20A.

Child Health Program.

§ **115-175.1. Expenditures.** — Not less than ninety percent (90%) of the expenditures from the appropriation for each year to the State Board of Education under the Nine Months School Fund for the Child Health Program shall be expended through the Child Health Program of the State Board of Education for the diagnosis and correction of chronic, remediable physical defects of public school children, in the following manner:

(1) Upon discovery of a chronic, remediable defect, if it appears that the expenditure of school health funds will be required to provide spectacles, prosthesis, or other correction, the appropriate school official shall forthwith notify the county director of public welfare of the county in which the child resides. Thereupon, the director of public welfare shall make such investigation as necessary and only upon his certification of financial need shall funds be expended for this purpose: Provided, that in cases of minor dental defects involving expenditures not in excess of ten dollars ($10.00), school and health department personnel may determine financial need.

(2) Child Health Program funds as defined in this section shall be expended in accordance with a uniform state-wide schedule of fees and costs, and only to provide spectacles, prosthesis, and other correction of chronic, remediable defects of public school children: Provided, that an amount not in excess of ten percent (10%) of the appropriation for this program for each year may be expended for case finding, health education, and intensive follow-up services. (1961, c. 833, s. 15; 1965, c. 356.)

Editor's Note. — The 1965 amendment substituted "director" for "superintendent" in subdivision (1).

Article 21.

Assignment and Enrollment of Pupils.

§ **115-176. Authority to provide for assignment and enrollment of pupils; rules and regulations.**—Each county and city board of education is hereby authorized and directed to provide for the assignment to a public school of each child residing within the administrative unit who is qualified under the laws of this State for admission to a public school. Except as otherwise provided in this article, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final. A child residing in one administrative unit may be assigned either with or without the payment of tuition to a public school located in another administrative unit upon such terms and conditions as may be agreed in writing between the boards of education of the adminstrative units involved and entered upon the official records of such boards. No child shall be enrolled in or permitted to attend any public school other than the public school to which the child has been assigned by the appropriate board of education. In exercising the authority conferred by this section, each county and city board of education shall make assignments of pupils to public schools so as to provide for the orderly and efficient administration of the public schools, and provide for the effective instruction, health, safety, and general welfare of the pupils. Each board of education may adopt such reasonable rules and regulations as in the opinion of the board are necessary in the administration of this article. (1955, c. 366, s. 1; 1956, Ex. Sess., c. 7, s. 1.)

Editor's Note. — For comment on this article, see 33 N.C.L. Rev. 552 (1955). For article on North Carolina school legislation, 1956, see 35 N.C.L. Rev. 1 (1956).

Constitutionality. — The standards set forth in § 115-177 as it stood before the 1956 amendment thereto, which standards were the same as those now set forth in the next to the last sentence of this section, were not on their face insufficient to sustain the exercise of the administrative power conferred. Carson v. Warlick, 238 F.2d 724 (4th Cir. 1956).

History of Article.—See In re Application for Reassignment, 247 N.C. 413, 101 S.E.2d 359 (1958).

Authority for Assignment and Enrollment of Pupils Is Vested Solely in Local Boards. — While State officials are given broad general powers over the public school system, specific authority for the assignment and enrollment of pupils in all city and county administrative units throughout the State is vested solely in county and city boards of education. There is no provision giving the State officials any authority or control whatever over local school officials relating to the enrollment and assignment of pupils in the public schools. Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958); McKissick v. Durham City Bd. of Educ., 176 F. Supp. 3 (M.D.N.C. 1959).

The duty to recognize the constitutional rights of pupils rests primarily upon the school board, and there it should be placed by an appropriate order of the court, for the United States district court has a secondary duty of enforcement of individual rights and of supervision of the steps taken by the school board to bring itself within the requirements of the law. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

Assumption That State Officials Will Obey Law.—Until there has been a failure of the administrative process, it should be assumed in a federal court that State officials will obey the law when their official action is properly invoked. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

Where the school board has represented to the court that standards and criteria of assignment will be applied without regard to the race of the applicant, until it can be demonstrated that this representation is false, there is no ground for complaint. Wheeler v. Durham City Bd. of Educ., 210 F. Supp. 839 (M.D.N.C. 1962).

When, however, administrators have displayed a firm purpose to circumvent the law, when they have consistently employed the administrative processes to frustrate enjoyment of legal rights, there is no longer room for indulgence of an assumption that the administrative proceedings provide an appropriate method by which recognition and enforcement of those rights may be obtained. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

Assignments on a racial basis are neither authorized nor contemplated by the permissive Pupil Enrollment Act. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

And Such Assignments Are Unconstitutional. — It is an unconstitutional administration of the North Carolina Pupil Enrollment Act to assign pupils to schools according to racial factors. Wheeler v. Durham City Bd. of Educ., 309 F.2d 630 (4th Cir. 1962).

Voluntary Separation of Races.—Though a voluntary separation of the races in schools is uncondemned by any provision of the Constitution, its legality is dependent upon the volition of each of the pupils. If a reasonable attempt to exercise a pupil's individual volition is thwarted by official coercion or compulsion, the organization of the schools, to that extent, comes into plain conflict with the constitutional requirement. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

If a voluntary system is to justify its name, it must, at reasonable intervals, offer to the pupils reasonable alternatives, so that, generally, those who wish to do so may attend a school with members of the other race. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

Dual System of Attendance Areas. — Where the school board maintained a dual system of attendance areas for elementary students based on race, the constitutional rights of negro applicants were offended. Wheeler v. Durham City Bd. of Educ., 196 F. Supp. 71 (M.D.N.C. 1961).

Even though in most instances a dual system of attendance areas resulted in children, both white and colored, being assigned to elementary schools nearest their homes, this did not remove the constitutional barrier against the maintenance of dual attendance areas, and negro plaintiffs were entitled to have such dual attendance areas abolished. Wheeler v. Durham City Bd. of Educ., 196 F. Supp. 71 (M.D.N.C. 1961).

Assignment to School outside Administrative Unit.—This section provides for assignment en masse upon the basis of residence to a school outside the administrative unit if the boards agree in writing, without notice, or the approval of the child or its parents, and without hearing, and no child shall be enrolled in or permitted to attend any other public school. In re Hayes, 261 N.C. 616, 135 S.E.2d 645 (1964).

Assignment of Pupils outside County of Their Residence.—Nowhere in this article is there any authority to assign pupils outside the county of their residence. The assignment by a county board of education of the plaintiffs to the schools in another county was without authority and of no effect. Plaintiffs have a legal right to the enjoyment of the opportunities in the county of their residence and the administrative board cannot justify requiring their resort to opportunities elsewhere. Griffith v. Board of Educ., 186 F. Supp. 511 (W.D.N.C. 1960).

Administrative Remedy Must Be Exhausted.—The administrative remedy provided by this article for persons who feel that they have not been assigned to the schools that they are entitled to attend must be exhausted before the federal courts will give relief. Carson v. Board of Educ., 227 F.2d 789 (4th Cir. 1955); Carson v. Warlick, 238 F.2d 724 (4th Cir. 1956); Holt v. Raleigh City Bd. of Educ., 164 F. Supp. 853 (E.D.N.C. 1958); Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958); Covington v. Edwards, 264 F.2d 780 (4th Cir. 1959).

A contention that even if the Assignment and Enrollment of Pupils Act is constitutional it need not be complied with in the instant case because the provisions of the act were being unconstitutionally applied was completely untenable in view of the fact that there was no allegation that any of the plaintiffs ever sought to comply with the provisions of the act. Not until each of the plaintiffs had applied to the county board of education as individuals, and not as a class, for reassignment, and had failed to be given the relief sought, should the court be asked to interfere in school administration. Covington v. Edwards, 165 F. Supp. 957 (M.D.N.C. 1958).

The administrative remedies provided under this article must be exhausted before the courts of the United States will grant injunctive relief, and rights must be asserted as individuals, not as a class or group. McKissick v. Durham City Bd. of Educ., 176 F. Supp. 3 (M.D.N.C. 1959); Jeffers v. Whitley, 197 F. Supp. 84 (M.D.N.C. 1961), aff'd in part and rev'd in part in 309 F.2d 621 (4th Cir. 1962).

The fact that administrative remedies provided under the State statutes, if fairly administered, must be exhausted before courts of the United States will grant injunctive relief, and the fact that such rights must be asserted as individuals, and not as a class or group, is no longer subject to debate. Wheeler v. Durham City Bd. of Educ., 196 F. Supp. 71 (M.D.N.C. 1961).

The federal court is not authorized to act until the administrative remedies have been properly sought and it is shown that the statute is being unconstitutionally administered. After the hearing and final decision thereon, if one is not satisfied, and can show that he has been discriminated against because of his race, he may then apply to the federal court for relief. Morrow v. Mecklenburg County Bd. of Educ., 195 F. Supp. 109 (W.D.N.C. 1961).

Unless Such Remedy Perpetrates Discrimination. — When an administrative remedy respecting school assignments and transfers, however fair upon its face, has, in practice, been employed principally as a means of perpetration of discrimination and of denial of constitutionally protected rights, it is consistently held inadequate. A remedy so administered need not be exhausted or pursued before resort to the courts for enforcement of the protected rights. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

Hence, school boards are required to reasonably administer the assignment statutes if pupils are to be required to exhaust their administrative remedies under this article before applying to the courts for relief. Wheeler v. Durham City Bd. of Educ., 196 F. Supp. 71 (M.D.N.C. 1961).

Judicial Relief. — On behalf of others similarly situated negro plaintiffs are not entitled to an order requiring the school board to effect a general intermixture of the races in the schools, but they are entitled to an order enjoining the school board from refusing admission to any school of any pupil because of the pupil's race. Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

For a statement of judicial relief that must be granted to school children who have been initially assigned on a racial basis, see Jeffers v. Whitley, 309 F.2d 621 (4th Cir. 1962).

State officials are not indispensable and necessary parties to an action to compel desegregation of schools in a county. Jeffers v. Whitley, 165 F. Supp. 951 (M.N.D.C 1958).

Members of the State Board of Education and the State Superintendent of Public Instruction are neither necessary nor proper parties in actions involving the assignment and enrollment of pupils under this article. Covington v. Edwards, 165 F. Supp. 957 (M.D.N.C. 1958).

Members of the North Carolina State Board of Education are neither necessary nor proper parties to an action against a city board of education. McKissick v. Durham City Bd. of Educ., 176 F. Supp. 3 (M.D.N.C. 1959).

When Class Action Proper. — Where each plaintiff was rejected for the same or similar reasons and each sought in the application the identical relief, having exhausted their administrative remedies they have the right under the law to maintain a class action in the federal courts in behalf of themselves and others likewise qualified. Griffith v. Board of Educ., 186 F. Supp. 511 (W.D.N.C. 1960).

Burden of Proof.—The burden of proof is on the plaintiffs to establish by a preponderance of the evidence that they have exhausted their administrative remedies before applying to the federal courts for injunctive relief. McKissick v. Durham City Bd. of Educ., 176 F. Supp. 3 (M.D.N.C. 1959).

The burden is upon plaintiffs seeking a transfer to establish by a preponderance of the evidence that they were denied a constitutional right because of their race. Jeffers v. Whitley, 197 F. Supp. 84 (M.D.N.C. 1961), aff'd in part and rev'd in part in 309 F.2d 621 (4th Cir. 1962).

Injunction.—Board of Education was enjoined from applying racial considerations to any applications for reassignment under the North Carolina Pupils Enrollment Act. Chance v. Board of Educ., 224 F. Supp. 472 (E.D.N.C. 1963).

Applied in Fremont City Bd. of Educ. v. Wayne County Bd. of Educ., 259 N.C. 280, 130 S.E.2d 408 (1963).

Quoted in Joyner v. McDowell County Bd. of Educ., 244 N.C. 164, 92 S.E.2d 724 (1956).

Cited in Holt v. Raleigh City Bd. of Educ., 265 F.2d 95 (4th Cir. 1959).

§ 115-177. Methods of giving notice in making assignments of pupils.—In exercising the authority conferred by § 115-176, each county or city board of education may, in making assignments of pupils, give individual written notice of assignment, on each pupil's report card or by written notice by any other feasible means, to the parent or guardian of each child or the person standing in loco parentis to the child, or may give notice of assignment of groups or categories of pupils by publication at least two times in some newspaper having general circulation in the adminstrative unit. (1955, c. 366, s. 2; 1956, Ex. Sess., c. 7, s. 2.)

Good Faith Required. — Utmost good faith is required on the part of public officials and the court should never condone dilatory practices or schemes designed to deny any citizen of his constitutional rights. McKissick v. Durham City Bd. of Educ., 176 F. Supp. 3 (M.D.N.C. 1959).

And Reasonable Administration. — Although a school board technically complied with this section by giving notice of initial assignments by publication of notice two times in a local newspaper, but so late as to make it practically impossible for pupils desiring reassignment to pursue their administrative remedies prior to the opening of school, a reasonable administration is required if pupils are to be required to exhaust their administrative remedies before applying to the courts for relief. Wheeler v. Durham City Bd. of Educ., 196 F. Supp. 71 (M.D.N.C. 1961).

Applied in Morrow v. Mecklenburg County Bd. of Educ., 195 F. Supp. 109 (W.D.N.C. 1961).

Cited in Holt v. Raleigh City Bd. of Educ., 164 F. Supp. 853 (E.D.N.C. 1958); Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958).

§ 115-178. Application for reassignment; notice of disapproval; hearing before board. — The parent or guardian of any child, or the person standing in loco parentis to any child, who is dissatisfied with the assignment made by a board of education may, within ten (10) days after notification of the assignment, or the last publication thereof, apply in writing to the board of education for the reassignment of the child to a different public school. Application for reassignment shall be made on forms prescribed by the board of education pursuant to rules and regulations adopted by the board of education. If the application for reassignment is disapproved, the board of education shall give notice to the applicant by registered mail, and the applicant may within five (5) days after receipt of such notice apply to the board for a hearing, and shall be entitled to a prompt and fair hearing on the question of reassignment of such child to a different school. A majority of the board shall be a quorum for the purpose of holding such hearing and passing upon application for reassignment, and the decision of a majority of the members present at the hearing shall be the decision of the board. If, at the hearing, the board shall find that the child is entitled to be reassigned to such school, or if the board shall find that the reassignment of the child to such school will be for the best interests of the child, and will not interfere with the proper administration of the school, or with the proper instruction of the pupils there enrolled, and will not endanger the health or safety of the children there enrolled, the board shall direct that the child be reassigned to and admitted to such school. The board shall render prompt decision upon the hearing, and notice of the decision shall be given to the applicant by registered mail. (1955, c. 366, s. 3; 1956, Ex. Sess., c. 7, s. 3.)

The combination of investigatory and quasi-judicial powers is established practice generally approved by the courts and subject to judicial review in case of abuse. In the operation of the public schools, such an arrangement is well-nigh essential and the North Carolina statute implies that both functions shall be exercised by the boards of education. Holt v. Raleigh City Bd. of Educ., 265 F.2d 95 (4th Cir. 1959), affirming 164 F. Supp. 853 (E.D.N.C. 1958).

The provisions of this section place the authority in the county boards of education to make the assignment and enrollment of pupils and contain no direction for the participation of the State Board of Education in these matters. A motion to amend the complaint to join these officials as additional defendants was denied in the instant case. Covington v. Edwards, 264 F.2d 780 (4th Cir. 1959).

Reassignment Is Made on Individual Basis.—Reassignment is in the nature of a special case and made on an individual student basis, upon the request of the parent. In re Hayes, 261 N.C. 616, 135 S.E.2d 645 (1964).

And Emphasis Is on Welfare of Child and Effect on School.—The statute places all emphasis on the welfare of the child and the effect upon the school to which reassignment is requested. In re Hayes, 261 N.C. 616, 135 S.E.2d 645 (1964).

Right to Apply for Reassignment Is Limited to Parent, Guardian or Person in Loco Parentis. — The language of this section is clear with respect to the right to apply for a reassignment. That right is limited to the parent, guardian, or person standing in loco parentis to the child seeking reassignment. Notice of the board's decision must be given applicant or his parent. No notice is required to be given to the parents of other children; they are not parties to the hearing; they are not entitled to notice of the board's decision. In re Application for Reassignment, 247 N.C. 413, 101 S.E.2d 359 (1958).

The provisions of this section authorize the parent to apply to the appropriate public school official for the enrollment of his child or children by name in any public school within the county or city administrative unit in which such child or children reside. But such parent is not authorized to apply for admission of any child or children other than his own unless he is the guardian of such child or children or stands in loco parentis to such child or children. Joyner v. McDowell County Bd. of Educ., 244 N.C. 164, 92 S.E.2d 795 (1956).

Criteria for Considering Applications for Transfer.—The courts have uniformly approved residence and academic preparedness as appropriate criteria for considering applications for transfer. A variety of other criteria would undoubtedly be appropriate in given situations, so long as such criteria are not used in such a way as to deprive individuals of their constitutional rights. Wheeler v. Durham City Bd. of Educ., 196 F. Supp. 71 (M.D.N.C. 1961).

Failure of Parents and Child to Appear before Board for Interrogation.—A board of education, requested to transfer a child from one school to another, was clearly within its right before making its initial decision in requesting the child and his parents to appear for interrogation, and they on their part were clearly delinquent in refusing to attend and to furnish all relevant information in their possession. They were not justified in deferring their appearance until the "formal hearing" provided by this section for a review of an adverse decision, or on failing, even at that stage, to appear in person and submit to examination by members of the board. Thus they were not entitled to appeal for relief to the federal court, not having exhausted the remedies afforded them by the statutes of the State. Holt v. Raleigh City Bd. of Educ., 265 F.2d 95 (4th Cir. 1959).

Failure to Make Second Application Following Merger of Schools. — Where plaintiffs were assigned by the board to the school structure to which they sought admission, but a merger of two schools was followed in a few days by a series of actions whereby the newly integrated school was disintegrated without notice to the plaintiffs, their desire to attend an integrated school was completely frustrated and relief should not be denied on the ground that the plaintiffs have failed to make a second application to the board for reassignment after the merger of the two schools had taken place, nor should the plaintiffs be required again to pursue the administrative remedies without the aid of the court. McCoy v. Greensboro City Bd. of Educ., 283 F.2d 667 (4th Cir. 1960).

Separate Suit for Each Child Is Not Required.—The dismissal of a suit by several parents of school children on the ground that they had not exhausted their administrative remedies does not mean that there must be a separate suit for each child on whose behalf it is claimed that an application for reassignment has been improperly denied. There can be no objection to the joining of a number of applicants in the same suit as has been done in other cases. The county board of education, however, is entitled, to consider each application on its individual merits, and if this is done without unnecessary delay and with scrupulous observance of individual constitutional rights, there will be no just cause for complaint. Covington v. Edwards, 264 F.2d 780 (4th Cir. 1959).

Exhaustion of State Remedies Required.—Persons aggrieved by the actions of the school officials of a state may not appeal for relief to the federal courts until they have exhausted the remedies afforded them by the statutes of the state. Holt v. Raleigh City Bd. of Educ., 265 F.2d 95 (4th Cir. 1959). See note to § 115-176.

Applied in Morrow v. Mecklenburg County Bd. of Educ., 195 F. Supp. 109 (W.D.N.C. 1961); Vickers v. Chapel Hill Hill City Bd. of Educ., 196 F. Supp. 97 (M.D.N.C. 1961).

Quoted in Carson v. Warlick, 238 F.2d 724 (4th Cir. 1956).

Cited in Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958); Wheeler v. Durham City Bd. of Educ., 210 F. Supp. 839 (M.D.N.C. 1962).

§ 115-179. Appeal from decision of board.—Any person aggrieved by the final order of the county or city board of education may at any time within ten (10) days from the date of such order appeal therefrom to the superior court of the county in which such administrative school unit or some part thereof is located. Upon such appeal, the matter shall be heard de novo in the superior court before a jury in the same manner as civil actions are tried and disposed of therein. The record on appeal to the superior court shall consist of a true copy of the application and decision of the board, duly certified by the secretary of such board. If the decision of the court be that the order of the county or city board of education shall be set aside, then the court shall enter its order so providing and adjudging that such child is entitled to attend the school as claimed by the appellant, or such other school as the court may find such child is entitled to attend, and in such case such child shall be admitted to such school by the county or city board of education concerned. From the judgment of the superior court an appeal may be taken by an interested party or by the board to the Supreme Court in the same manner as other appeals are taken from judgments of such court in civil actions. (1955, c. 366, s. 4.)

"Person Aggrieved".—The "person aggrieved" as used in this section means the person who makes application for the particular child for reassignment. In re Application for Reassignment, 247 N.C. 413, 101 S.E.2d 359 (1958).

"De Novo". — The word "de novo" means fresh or anew; for a second time; and a de novo trial in appellate court is a trial had as if no action whatever had been instituted in the court below. In re Hayes, 261 N.C. 616, 135 S.E.2d 645 (1964).

Who May Appeal. — An appeal to the superior court from the denial of an application made by any parent, guardian or person standing in loco parentis to any child or children for the admission of such child or children to a particular school, must be prosecuted in behalf of the child or children by the interested parent, guardian or person standing in loco parentis to such child or children respectively and not collectively. Joyner v. McDowell County Bd. of Educ., 244 N.C. 164, 92 S.E.2d 795 (1956); In re Application for Reassignment, 247 N.C. 413, 101 S.E.2d 359 (1958).

Where a municipal board of education grants the applications for reassignment of certain pupils, appeal from its decision may be taken as to each child only by the child's parent, guardian or person standing in loco parentis, and the parents of other children attending the schools to which the reassignments are made are not the parties aggrieved by such reassignments within the purview of this section, and have no standing in court to contest the assignments. Moreover, each reassignment must be challenged separately; reassignments cannot be challenged en masse. In re Application for Reassignment, 247 N.C. 413, 101 S.E.2d 359 (1958).

Power of Superior Court.—The appeal in a de novo hearing vests the superior court with full power to make the requested reassignment if permitted by law. In re Hayes, 261 N.C. 616, 135 S.E.2d 645 (1964).

Waiver of Jury Trial.—While this section provides for a de novo hearing before a jury, nevertheless the parties, by consenting to reference to a referee, waive the jury trial and substitute therefor the hearing before the referee. In re Hayes, 261 N.C. 616, 135 S.E.2d 645 (1964).

Mandamus.—An application for mandamus, requiring the immediate integration of all negro pupils residing in the administrative unit, is neither contemplated nor authorized by this section. Joyner v. McDowell County Bd. of Educ., 244 N.C. 164, 92 S.E.2d 795 (1956).

Federal Remedies.—The appeals to the courts which this article provides are judicial, not administrative, remedies, and after administrative remedies before the school boards have been exhausted, judicial remedies for denial of constitutional rights may be pursued at once in the federal courts without pursuing State court remedies. Carson v. Warlick, 238 F.2d 724 (4th Cir. 1956); Holt v. Raleigh City Bd. of Educ., 164 F. Supp. 853 (E.D.N.C. 1958); Covington v. Edwards, 264 F.2d 780 (4th Cir. 1959).

Cited in Jeffers v. Whitley, 165 F. Supp. 951 (M.D.N.C. 1958).

SUBCHAPTER IX. SCHOOL TRANSPORTATION.

Article 22.

School Buses.

§ 115-180. Authority of county and city boards of education.—Each county board of education, and each city board of education is hereby authorized, but is not required, to acquire, own and operate school buses for the transportation of pupils enrolled in the public schools of such county or city administrative unit and of persons employed in the operation of such schools within the limitations set forth in this subchapter. Each such board may operate such buses to and from such of the schools within the county or city administrative unit, and in such number, as the board shall from time to time find practicable and appropriate for the safe, orderly and efficient transportation of such pupils and employees to such schools. (1955, c. 1372, art. 21, s. 1.)

State Board Relieved of Responsibility.—The General Assembly relieved the State Board of Education from all responsibility in connection with the operation and control of school buses in this State by the enactment of this article, which authorizes county and city boards of education to operate buses for the transportation of pupils enrolled in the public schools of such county or city administrative units.

Huff v. Northampton County Bd. of Educ., 259 N.C. 75, 130 S.E.2d 26 (1963).

Transportation of School Bands and Athletic Teams. — While it is true that this article which governs the operation of school buses, makes no provision one way or the other for the transportation of athletic teams or school bands, it is equally true that school bands and athletic teams are under the control of the school authorities. Therefore the board controlling such activities would have the inherent right to contract for such transportation as might be necessary to transport its athletic teams and its bands to and from such events as have been scheduled under the supervision of school authorities. State ex rel. North Carolina Util. Comm'n v. McKinnon, 254 N.C. 1, 118 S.E.2d 134 (1961).

§ 115-181. Authority and duties of State Board of Education.—(a) The State Board of Education shall have no authority over or control of the transportation of pupils and employees upon any school bus owned and operated by any county or city board of education, except as provided in this subchapter.

(b) The State Board of Education shall be under no duty to supply transportation to any pupil or employee enrolled or employed in any school. Neither the State nor the State Board of Education shall in any manner be liable for the failure or refusal of any county or city board of education to furnish transportation, by school bus or otherwise, to any pupil or employee of any school, or for any neglect or action of any county or city board of education, or any employee of any such board, in the operation or maintenance of any school bus.

(c) The State Board of Education shall, as soon as may be practicable, allocate and assign all school buses and service vehicles now owned by the State to respective county and city boards of education in accordance with the present need of each such board for school bus transportation. Such need shall be determined by the State Board of Education from its records showing the number of state-owned buses and service vehicles presently being operated by such county or city administrative unit. Upon such assignment and allocation of such school buses and service vehicles the State Board of Education shall cause the title to each such bus or service vehicle to be transferred to the county board of education, or to the city board of education to which such bus or service vehicle has been so assigned and allocated.

(d) The State Board of Education shall from time to time adopt such rules and regulations with reference to the construction, equipment, color, and maintenance of school buses, the number of pupils who may be permitted to ride at the same time upon any bus, and the age and qualifications of drivers of school buses as it shall deem to be desirable for the purpose of promoting safety in the operation of school buses. No school bus shall be operated for the transportation of pupils unless such bus is constructed and maintained as prescribed in such regulations and is equipped with adequate heating facilities, a standard signaling device for giving due notice that the bus is about to make a turn, an alternating flashing stop light on the front of the bus, an alternating flashing stop light on the rear of the bus, and such other warning devices, fire protective equipment and first aid supplies as may be prescribed for installation upon such buses by the regulation of the State Board of Education.

(e) The State Board of Education shall, when requested so to do by any county or city board of education, but not otherwise, advise such county or city board with reference to the establishment and amendment of school bus routes, the acquisition and maintenance of school buses, or any other question which may arise in connection with the organization and operation of the school bus transportation system of such county or city board.

(f) The State Board of Education shall allocate to the respective county and city boards of education all funds appropriated from time to time by the General Assembly for the purpose of providing transportation to the pupils enrolled in the public schools within this State. All such funds shall be allocated by the State Board of Education in accordance with the number of pupils to be transported, the length of bus routes, road conditions and all other circumstances affecting the cost of the transportation of pupils by school bus to the end that the funds so appropriated may be allocated on a fair and equitable basis, according to the needs of the respective county and city administrative units and so as to provide the most efficient use of such funds. Such allocation shall be made by the State Board of Education at the beginning of each fiscal year, except that the State Board may reserve for future allocation from time to time within such fiscal year as the need therefor shall be found to exist, a reasonable amount not to exceed ten percent (10%) of the total funds available for transportation in such fiscal year from such appropriation.

(g) Upon such allocation by the State Board of Education, all funds so appropriated by the General Assembly shall be paid over to the respective county and city boards of education in accordance with such allocation in equal monthly installments throughout the regular school year: Provided, however, that upon the request of a county or city board of education, the State Board of Education may, in its discretion, pay over to the county or city board all or any part of any or all monthly installments prior to the time when the same would otherwise be payable. The respective county and city boards shall use such funds for the purposes of replacing, maintaining, insuring, and operating public school buses and service vehicles in accordance with the provisions of this subchapter, and for no other purpose, but in the making of expenditures for such purposes shall be subject to no control by the State Board of Education. (1955, c. 1372, art. 21, p. 2.)

Quoted in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

§ **115-181.1:** Repealed by Session Laws 1965, c. 1095, s. 1.

Editor's Note. — The repealed section derived from Session Laws 1963, c. 990, s. 1.

§ **115-182. Assignment of school buses to schools.**—The superintendent of the schools of each county or city administrative unit which shall elect to operate a school bus transportation system, shall, prior to the commencement of each regular school year and subject to the approval of the county or city board of education, allocate and assign to the respective public schools within the jurisdiction of such county or city administrative unit the school buses which the county or city board shall own and direct to be operated during such school year. From time to time during such school year, subject to the directions of the county or city board of education, the superintendent may revise such allocation and assignment of school buses in accordance with the changing transportation needs and conditions at the respective schools of such county or city administrative unit, and may, pursuant to such revision, assign an additional bus or buses to a school or withdraw a bus or buses from a school in such county or city administrative unit. (1955, c. 1372, art. 21, s. 3.)

§ **115-183. Use and operation of school buses.**—Public school buses may be used for the following purposes only, and it shall be the duty of the superintendent of the school of each county and city administrative unit to supervise the use of all school buses operated by such county or city administrative unit so as to assure and require compliance with this section:

(1) A school bus may be used for the transportation of pupils enrolled in and employees in the operation of the school to which such bus is assigned by the superintendent of the schools of the county or city administrative unit. Except as otherwise herein provided, such transportation shall be limited to transportation to and from such school for the regularly organized school day, and from and to the points designated by

the principal of the school to which such bus is assigned, for the receiving and discharging of passengers. No pupil or employee shall be so transported upon any bus other than the bus to which such pupil or employee has been assigned pursuant to the provisions of this subchapter.

(2) In the case of illness or injury requiring immediate medical attention of any pupil or employee while such pupil or employee is present at the school in which such pupil is enrolled or such employee is employed, the principal of such school may, in his discretion, permit such pupil or employee to be transported by a school bus to a doctor or hospital for medical treatment, and may, in his discretion, permit such other person as he may select to accompany such pupil.

(3) The board of education of any county or city administrative unit may operate the school buses of such unit one day prior to the opening of the regular school term for the transportation of pupils and employees to and from the school to which such pupils are assigned or in which they are enrolled and such employees are employed, for the purposes of the registration of students, the organization of classes, the distribution of textbooks, and such other purposes as will, in the opinion of the superintendent of the schools of such unit, promote the efficient organization and operation of such public schools.

(4) A county school board or the school board of a city administrative unit, which elects to operate a school bus transportation system, shall not be required to provide transportation for any employee other than the driver of the bus, nor shall such board be required to provide transportation for any pupil living within one and one-half miles of the school in which such pupil is enrolled.

(5) The county or city board of education, under rules and regulations to be adopted by such board, may permit the use and operation of school buses for the transportation of pupils and teachers on necessary field trips to and from demonstration projects carried on in connection with courses in agriculture, home economics, and other vocational subjects; for the transportation of pupils and teachers to health clinics; and to concerts given by the North Carolina Symphony Orchestra; provided that under no circumstance shall the round-trip mileage for any one trip exceed 50 miles nor on any such trip shall a county or city-owned bus be taken out of the State of North Carolina. Under rules and regulations to be adopted by the board of education, school buses owned by said board may also be used for the evacuation of pupils and other school employees when such an evacuation is jointly authorized and directed by State and county or city civil defense directors; provided, the State Board of Education shall not be liable for operating costs nor for any compensation claims or tort claims incurred as a result of such an evacuation; provided further when buses are used for such civil defense purposes, the local civil defense agency in the area in which such evacuation tests are conducted shall be liable for operating costs and shall provide liability insurance for the full protection of the pupils and all school employees taking part in such evacuation tests and for all other compensation claims or tort claims incurred as a result of such evacuation. (1955, c. 1372, art. 21, s. 4; 1957, c. 1103.)

Local Modification.—Mecklenburg: 1961, c. 143.

Cross Reference. — As to maximum speed school buses allowed to travel, see § 20-218.

§ 115-184. Assignment of pupils to school buses.—(a) The principal of a school, to which any school bus has been assigned by the superintendent of the schools of the county or city administrative unit embracing such school, shall assign to such bus or buses the pupils and employees who may be transported to and from such school upon such bus or buses. No pupil or employee shall be permitted to ride upon any school bus to which such pupil or employee has not been so assigned by the principal, except by the express direction of the principal.

(b) In the event that the superintendent of the schools of any county or city administrative unit shall assign a school bus to be used in the transportation of pupils to two or more schools, the superintendent shall designate the number of pupils to be transported to and from each such school by such bus, and the principals of the respective schools shall assign pupils to such buses in accordance with such designation.

(c) Any pupil enrolled in any school, or the parent or guardian of any such pupil, or the person standing in loco parentis to such pupil, may apply to the principal of such school for transportation to and from such school by school bus for the regularly organized school day. The principal thereupon shall assign such pupil to a school bus serving the bus route upon which such pupil lives, if any, and if such pupil is entitled to ride upon such bus in accordance with the provisions of this subchapter and the regulations of the State Board of Education herein provided for. Such assignment shall be made by the principal so as to provide for the orderly, safe and efficient transportation of pupils to such school and so as to promote the orderly and efficient administration of the school and the health, safety and general welfare of the pupils to be so transported. Assignments of pupils and employees to school buses may be changed by the principal of the school as he may from time to time find proper for the safe and efficient transportation of such pupils and employees.

(d) The parent or guardian of any pupil enrolled in any school, or the person standing in loco parentis to any such pupil, who shall apply to the principal of such school for the transportation of such pupil to and from such school by school bus, may, if such application is denied, or if such pupil is assigned to a school bus not satisfactory to such parent, guardian, or person standing in loco parentis to such pupil, pursuant to rules and regulations established by the county or city board of education, apply to such board for such transportation upon a school bus designated in such application, and shall be entitled to a prompt and fair hearing by such board in accordance with the rules and regulations established by it. The majority of such board shall be a quorum for the purpose of holding such hearing and passing upon such application, and the decision of the majority of the members present at such hearing shall be the decision of the board. If, at such hearing, the board shall find that pupil is entitled to be transported to and from such school upon the school bus designated in such application, or if the board shall find that the transportation of such pupil upon such bus to and from such school will be for the best interests of such pupil, will not interfere with the proper administration of such school, or with the safe and efficient transportation by school bus of other pupils enrolled in such school and will not endanger the health or safety of the children there enrolled, the board shall direct that such child be assigned to and transported to such school upon such bus.

(e) Any person aggrieved by the final order of the county or city board of education may at any time within ten (10) days from the date of such order appeal therefrom to the superior court of the county in which such administrative school unit or some part thereof is located. Upon such appeal, the matter shall be heard de novo in the superior court before a jury in the same manner as civil actions are tried and disposed of therein. The record on appeal to the superior court shall consist of a true copy of the application and decision of the board, duly certified by the secretary of such board. If the decision of the court be that the order of the county or city board of education shall be set aside, then the court shall enter its order so providing and adjudging that such child is entitled to be transported to and from such school upon the school bus designated in such application, and in such case such child shall be assigned to such school bus by the county or city board of education concerned. From the judgment of the superior court an appeal may be taken by any interested party or by the board to the Supreme Court in the same manner as other appeals are taken from judgments of such court in civil actions.

(f) No employee shall be assigned to or permitted to ride upon a school bus when to do so will result in the overcrowding of such bus or will prevent the assignment to such bus of a pupil entitled to ride thereon, or will otherwise, in the opinion of the principal, be detrimental to the comfort or safety of the pupils assigned to such bus, or to the safe, efficient and proper operation of such bus. (1955, c. 1372, art. 21, s. 5.)

§ **115-185. School bus drivers; monitors.**—(a) Each county or city school board, which elects to operate a school bus transportation system, shall employ the necessary drivers for such school buses. Such drivers shall possess all qualifications prescribed by the regulations of the State Board of Education herein provided for, but the selection and employment of each driver shall be made by the county or city board of education, and the driver shall be the employee of such county or city administrative unit. Each county or city board of education shall assign the bus drivers employed by it to the respective schools within the jurisdiction of such board, and the principal of each such school shall assign the drivers to the school buses to be driven by them. No school bus shall at any time be driven or operated by any person other than the bus driver assigned by such principal to such bus except by the express direction of such principal or in accordance with rules and regulations of the appropriate local board of education.

(b) The driver of a school bus subject to the direction of the principal shall have complete authority over and responsibility for the operation of the bus and the maintaining of good order and conduct upon such bus, and shall report promptly to the principal any misconduct upon such bus or disregard or violation of the driver's instructions by any person riding upon such bus. The principal may take such action with reference to any such misconduct upon a school bus, or any violation of the instructions of the driver, as he might take if such misconduct or violation had occurred upon the grounds of the school.

(c) The driver of any school bus shall permit no person to ride upon such bus except pupils or school employees assigned thereto or persons permitted by the express direction of the principal to ride thereon.

(d) The principal of a school, to which a school bus has been assigned, may, in his discretion, appoint a monitor for any bus so assigned to such school. It shall be the duty of such monitor, subject to the direction of the driver of the bus, to preserve order upon the bus and do such other things as may be appropriate for the safety of the pupils and employees assigned to such bus while boarding such bus, alighting therefrom or being transported thereon, and to require such pupils and employees to conform to the rules and regulations established by the county or city board of education for the safety of pupils and employees upon school buses. (1955, c. 1372, art. 21, s. 6.)

Cross Reference.—As to standard qualifications of school bus drivers, see § 20-218.

Applied in Huff v. Northampton County Bd. of Educ., 259 N.C. 75, 130 S.E.2d 26 (1963).

Cited in Branch Banking & Trust Co. v. Wilson County Bd. of Educ., 251 N.C. 603, 111 S.E.2d 844 (1960).

§ **115-186. School bus routes.**—(a) The principal of the school to which a school bus has been assigned shall, prior to the commencement of each regular school year, prepare and submit to the superintendent of the schools of the county or city administrative unit a plan for a definite route, including stops for receiving and discharging pupils, for each school bus assigned to such school so as to assure the most efficient use of such bus and the safety and convenience of the pupils assigned thereto. The superintendent shall examine such plan and may, in his discretion, obtain the advice of the State Board of Education with reference thereto. The superintendent shall make such changes in the proposed bus routes as he shall deem proper for the said purposes and, thereupon, shall approve the route. When so approved the buses shall be operated upon the route so established and not otherwise, except as provided in this subchapter. From time to time the principal may suggest changes in any such bus route as he shall deem proper for the said purposes, and the same shall be effective when approved by the superintendent of the county or city administrative unit.

(b) Unless road or other conditions shall make it inadvisable to do so, public school buses shall be so routed on state-maintained highways that the school bus, to which such pupil is assigned, shall pass within one mile of the residence of each pupil, who lives one and one-half miles or more from the school to which such pupil is assigned.

(c) All bus routes when established pursuant to this section shall be filed in the office of the board of education of the county or city administrative unit, and all changes made therein shall be filed in the office of such board within ten days after such change shall become effective.

(d) If any school bus route established or changed as hereinabove provided is unsatisfactory to the district school committee, the committee may request the board of education of the county or city administrative unit to make such change in such route as the committee desires. In the event, the board of education shall hear the request of the district school committee and shall make such change, if any, in such route as to the board shall seem advisable so as to assure the most efficient use of such bus and the safety and convenience of the pupils assigned thereto.

(e) No provision of this subchapter shall be construed to place upon the State, or upon any county or city, any duty to supply any funds for the transportation of pupils, or any duty to supply funds for the transportation of pupils who live within the corporate limits of the city or town in which is located the public school in which such pupil is enrolled or to which such pupil is assigned, even though transportation to or from such school is furnished to pupils who live outside the limits of such city or town. (1955, c. 1372, art. 21, s. 7; 1959, c. 573, s. 15; 1963, c. 990, ss. 2, 3; 1965, c. 1095, ss. 2, 3.)

Editor's Note. — The 1963 amendment rewrote subsection (b) and repealed subsection (e).

The 1965 amendment again rewrote subsection (b) to read as it did prior to the 1963 amendment and reenacted subsection (e) to read as it did prior to the 1963 amendment.

Cited in Morrow v. Mecklenburg County Bd. of Educ., 195 F. Supp. 109 (W.D.N.C. 1961).

§ 115-187. Inspection of school buses and activity buses; report of defects by drivers; discontinuing use until defects remedied. — (a) The superintendent of schools in each county, and in each city administrative unit, shall cause each school bus owned or operated by such county or city administrative unit to be inspected at least once each 30 days during the school year for mechanical defects, or other defects which may affect the safe operation of such bus. A report of such inspection, together with the recommendations of the person making the inspection, shall be filed promptly in the office of the superintendent of the schools of such county or city administrative unit, and a copy thereof shall be forwarded to the principal of the school to which such bus is assigned.

(b) It shall be the duty of the driver of each school bus to report promptly to the principal of the school, to which such bus is assigned, any mechanical defect or other defect which may affect the safe operation of the bus when such defect comes to the attention of the driver, and the principal shall thereupon report such defect to the superintendent of the schools of the county or city administrative unit. It shall be the duty of the superintendent of the schools of the county or city administrative unit to cause any and all such defects to be corrected promptly.

(c) If any school bus is found by the principal of the school, to which it is assigned, or by the superintendent of the schools of the county or city administrative unit, to be so defective, that the bus may not be operated with reasonable safety, it shall be the duty of such principal or superintendent to cause the use of such bus to be discontinued until such defect is remedied, in which event the principal of the school, to which such bus is assigned, may permit the use of a different bus assigned to such school in the transportation of the pupils and employees assigned to the bus found to be defective.

(d) The superintendent of schools in each county, and in each city administrative unit, shall cause each activity bus which is used for the transportation of students by such county or city administrative unit or any public school system therein to be inspected for mechanical defects, or other defects which may affect the safe operation of such activity bus, at the same time and in the same way and manner as the regular public school buses for the normal transportation of public school pupils are inspected. A report of such inspection, together with the recommendations of the person making the inspection, shall be filed with the principal of the school which uses and operates such activity bus and a copy shall be forwarded to the superintendent of schools or city administrative unit involved. It shall be the duty of the driver of each activity bus to make the same reports to the principal of the school using and operating such activity bus as is required by this section. If any public school activity bus is found to be so defective that the activity bus may not be operated with reasonable safety, it shall be the duty of such principal to cause the use of such activity bus to be discontinued until such defect is remedied to the satisfaction of the person making the inspection and a report to this effect has been filed in the manner herein prescribed. Nothing in this subsection shall authorize the use of State or local tax funds for the purchase, operation or repair of any activity bus. (1955, c. 1372, art. 21, s. 8; 1961, c. 474.)

§ 115-188. Purchase and maintenance of school buses, materials and supplies.—(a) To the extent that the funds shall be made available to it for such purpose, a county board of education or a city board of education is authorized to purchase from time to time such additional school buses and service vehicles or replacements for school buses and service vehicles, as may be deemed by such board to be necessary for the safe and efficient transportation of pupils enrolled in the schools within such county or city administrative unit. Any school bus so purchased shall be constructed and equipped as prescribed by the provisions of this subchapter and by the regulations of the State Board of Education issued pursuant thereto.

(b) The tax levying authorities of any county are hereby authorized to make provision from time to time in the capital outlay budget of the county for the purchase of such school buses or service vehicles.

(c) Any funds appropriated from time to time by the General Assembly for the purchase of school buses or service vehicles shall be allocated by the State Board of Education to the respective county and city boards of education in accordance with the requirements of such boards as determined by the State Board of Education, and thereupon shall be paid over to the respective county and city boards of education in accordance with such allocation.

(d) The title to any additional or replacement school bus or service vehicle purchased pursuant to the provisions of this section, shall be taken in the name of the board of education of such county or city administrative unit, and such bus shall in all respects be maintained and operated pursuant to the provisions of this subchapter in the same manner as any other public school bus.

(e) It shall be the duty of the county board of education to provide adequate buildings and equipment for the storage and maintenance of all school buses and service vehicles owned or operated by the county board of education or by the board of education of any city administrative unit in such county. It shall be the duty of the tax levying authorities of such county to provide in its capital outlay budget for the construction or acquisition of such buildings and equipment as may be required for this purpose.

(f) In the event of the damage or destruction of any school bus or service vehicle by fire, collision, or otherwise, the board of education of the county or city administrative unit which shall own or operate such bus or service vehicle may apply to the State Board of Education for funds with which to replace it. If the State Board of Education finds that such bus or service vehicle has been destroyed or damaged to the extent that it cannot be made suitable for further use, and if the State Board of Education finds that the replacement of such bus or service vehicle is necessary in order to enable such county or city administrative unit to operate properly its school bus transportation system, the State Board of Education shall allot to the board of education of such county or city administrative unit from the funds now held by the State Board of Education for the replacement of school buses or service vehicles, or from funds hereafter appropriated by the General Assembly for that purpose, a sum sufficient to purchase a new school bus or service vehicle to be used as a replacement for such damaged or destroyed bus or service vehicle and upon such allocation such sum shall be paid over to or for the account of the board of education of such county or city administrative unit for such purpose.

(g) All school buses or service vehicles purchased by or for the account of any county or city board of education, except school buses or service vehicles purchased by such board from another county or city board of education of this State, shall be purchased through the Division of Purchase and Contract.

(h) Appropriations made in the biennial Budget Appropriation Act for the purchase of public school buses shall be permanent appropriations, and unexpended portions of those appropriations shall not revert to the general fund at the end of the biennium for which appropriated. Any unexpended portion of those appropriations shall at the end of each fiscal year be transferred to a reserve account and shall be held, together with any other funds appropriated for the purpose, for the purchase of public school buses. (1955, c. 1372, art. 21, s. 9; 1961, c. 833, s. 16.)

§ 115-189. Aid in lieu of transportation.—(a) When, by reason of road conditions or otherwise, any county or city board of education, which shall elect to operate a school bus transportation system, shall find it impracticable to furnish to a pupil transportation by school bus to the school in which such pupil is enrolled, or to which such pupil is assigned, the board may assign such pupil to such other school within such county or city administrative unit as the board shall deem advisable, unless the parent or guardian of such pupil or the person standing in loco parentis to such pupil, shall notify the principal of the school, in which such pupil is enrolled or to which such pupil is assigned, of the desire of such pupil to continue to attend such school without the benefit of transportation by school bus.

(b) In the event that any county or city board of education, which shall operate a system of school bus transportation, shall find it impracticable to furnish to a pupil such transportation to the school in which such pupil is enrolled or to which such pupil is assigned, and if, as a result thereof, such pupil shall be required to obtain board and lodging at a place other than the residence of such pupil in order to attend a school, such board may, in its discretion, provide for the payment to the parent or guardian of such pupil of a sum not to exceed twenty-five dollars ($25.00) per month for each school month that such pupil shall so obtain board and lodging at a place other than the residence of the pupil for the purpose of attending a school. (1955, c. 1372, art. 21, s. 10.)

§ 115-190. Contracts for transportation. — Any county or city board of education may, in lieu of the operation by it of public school buses, enter into a contract with any person, firm or corporation for the transportation by such person, firm or corporation of pupils enrolled in the public schools of such county or city administrative unit for the same purposes for which such county or city administrative unit is authorized by this subchapter to operate public school buses. Any vehicle used by such person, firm or corporation for the transportation of such pupils shall be constructed and equipped as provided in this subchapter and in the regulations promulgated pursuant to this subchapter by the State Board of Education, and the driver of such vehicle shall possess all of the qualifications prescribed by such rules and regulations of the State Board of Education. In the event that any county or city board of education shall enter into such a contract, the board may use for such purposes any funds which it might use for the operation of school buses owned by the board, and the tax levying authorities of the county or of the city may provide in the county or city budget such additional funds as may be necessary to carry out such contracts. (1955, c. 1372, art. 21, s. 11.)

§ 115-190.1. Transportation continued for area annexed to municipality.—In each and every area of the State where school bus transportation of pupils to and from school is now being provided, such school transportation shall not be discontinued by any State or local governmental agency for the sole reason that the corporate limits of any municipality have been extended to include such area since February 6, 1957, and school bus transportation of pupils shall be continued in the same manner and to the same extent as if such area had not been included within the corporate limits of a municipality. (1957, c. 1375; 1963, c. 917; c. 990, s. 4; 1965, c. 1095, s. 4.)

Editor's Note — The 1963 amendment inserted the words "or any school located in such area" in two places in this section.

The 1965 amendment reenacted this section to read as it did prior to the 1963 amendment. This section had been repealed by Session Laws 1963, c. 990, s. 4.

§ 115-191. Use of school buses by State guard or national guard.—When requested to do so by the Governor, the board of education of any county or city administrative unit is authorized and directed to furnish a sufficient number of school buses to the North Carolina State guard or the national guard for the purpose of transporting members of the State guard or members of the national guard to and from authorized places of encampment, or to and from places to which members of the State guard or members of the national guard are ordered to proceed for the purpose of suppressing riots or insurrections, repelling invasions or dealing with any other emergency. Public school buses so furnished by any county or city administrative unit to the North Carolina State guard or the national guard shall be operated by members or employees of the State or national guard, and all expense of such operation, including any repair or replacement of any bus occasioned by such operation, shall be paid by the State from the appropriations available for the use of the State guard or the national guard. (1955, c. 1372, art. 21, s. 12.)

§ 115-192. Payment of awards to school bus drivers pursuant to the Workmen's Compensation Act. — In the event that the Industrial Commission shall make an award pursuant to the Workmen's Compensation Act against any county or city board of education on account of injuries to or the death of a school bus driver arising out of and in the course of his employment as such driver, the county or city board of education shall draw a requisition or requisitions upon the State Board of Education for the amount required to pay such award. The State Board of Education shall honor such requisition to the extent that it shall have in its hands, or subject to its control, available funds which have been or shall thereafter be appropriated by the General Assembly for the support of the nine months school term. It shall be the duty of the county or city board of education to apply all funds received by it from the State Board of Education pursuant to such requisition to the payment of such award. Neither the State nor the State Board of Education shall be deemed the employer of such school bus driver, nor shall the State or the State Board of Education be liable to any school bus driver or any other person for the payment of any claim, award, or judgment under the provisions of the Workmen's Compensation Act or of any other law of this State for any injury or death arising out of or in the course of the operation by such driver of a public school bus. Neither the county or city board of education, the county or city administrative unit, nor the tax levying authorities for the county or city administrative unit shall be liable for the payment of any award made pursuant to the provisions of this section in excess of the amount paid upon such requisition by the State Board of Education, nor shall the county or city board of education, the county or city administrative unit, nor the said tax levying authorities be required to provide or carry workmen's compensation insurance for such purpose. (1955, c. 1292.)

ARTICLE 23.

Certain Injuries to School Children Compensable.

§ **115-193. State Board of Education authorized to pay claims.**—The State Board of Education is hereby authorized and directed to set up in its budget for the operation of the public schools of the State a sum of money which it deems sufficient to pay the claims hereinafter authorized and provided for. The Board is hereby authorized and directed to pay out of said sum provided for this purpose to the parent, guardian, executor or administrator of any pupil who may be injured or whose death results from injuries received while such pupil is boarding, riding on, or alighting from a school bus owned and operated by any county or city administrative unit, and transporting pupils to or from the public schools of the State, or sustained as a result of the operation of a school bus on the grounds of the school in which such pupil is enrolled, medical, hospital, surgical, and funeral expenses incurred on account of such injuries or death of such pupil in an amount not to exceed six hundred dollars ($600.00). This section shall not apply to injuries sustained as a result of the operation of any activity bus as distinguished from a regular school bus. (1955, c. 1372, art. 22, s. 1.)

§ **115-194. Approval of claims by State Board of Education final.**—The State Board of Education is hereby authorized and empowered, under such rules and regulations as it may promulgate, to approve any claim authorized herein, and when such claim is so approved, such action shall be final: Provided, that the total benefits for hospitalization, medical treatment, and funeral expenses shall in no case exceed six hundred dollars ($600.00) for any pupil so injured. (1955, c. 1372, art. 22, s. 2.)

§ **115-195. Claims paid without regard to negligence of driver; amounts paid out declared lien upon civil recoveries for child.**—The claims authorized herein shall be paid by the said State Board of Education, regardless of whether the injury received by said pupil shall have been due to the negligence of the driver of the said school bus: Provided, that whenever there 's recovery on account of said accident by the father, mother, guardian, or administrator of such pupil against any person, firm or corporation, the amount expended by the State Board of Education hereunder shall constitute a paramount lien on any judgment recovered by said parent, guardian, or administrator, and shall be discharged before any money is paid to said parent, guardian, or administrator, on account of said judgment. (1955, c. 1372, art. 22, s. 3.)

§ **115-196. Disease and injuries incurred while not riding on bus not compensable.**—Nothing in this article shall be construed to mean that the

State shall be liable for sickness, or disease, or for personal injuries sustained otherwise than by reason of the operation of such bus. (1955, c. 1372, art. 22, s. 4.)

§ **115-197. Claims must be filed within one year.** — The right to compensation as authorized herein shall be forever barred unless a claim be filed with the State Board of Education within one year after the accident, and if death results from the accident, unless a claim be filed with the said Board within one year thereafter. (1955, c. 1372, art. 22, s. 5.)

SUBCHAPTER X. INSTRUCTION.

Article 24.

Courses of Study.

§ **115-198. Standard course of study for each grade.** — Upon the recommendation of the State Superintendent, the State Board of Education shall adopt a standard course of study for each grade in the elementary school and in the high school. These courses of study shall set forth what subjects shall be taught in each grade, and outline the basal and supplementary books on each subject to be used in each grade.

The State Superintendent shall prepare a course of study for each grade of the school system which shall outline the appropriate subjects to be taught, together with directions as to the best methods of teaching them as guidance for the teachers. There shall be included in the course of study for each grade outlines and suggestions for teaching the subject of Americanism; and in one or more grades, as directed by the State Superintendent of Public Instruction, outlines for the teaching of alcoholism and narcotism.

County and city boards of education shall require that all subjects in the course of study, except foreign languages, be taught in the English language, and any teacher or principal who shall refuse to conduct his recitations in the English language may be dismissed. (1955, c. 1372, art. 23, s. 1.)

§ **115-199. Adult education.**—When in the judgment of the State Board of Education a program of adult education should be established as a part of the public school system and when appropriations have been made therefor, there shall be organized and administered under the general supervision of the State Superintendent of Public Instruction, course in adult education: Provided, that county and city boards of education, in their discretion, may institute and support such programs from local funds upon the approval of the State Board of Education. (1955, c. 1372, art. 23, s. 2; 1963, c. 448, s. 24.)

Editor's Note. — The 1963 amendment added the words "upon the approval of the State Board of Education" at the end of the section.

§ **115-200. Instruction for handicapped persons.** — There shall be organized and administered under the general supervision of the State Superintendent of Public Instruction a program of special courses of instruction for handicapped, crippled, and other classes of individuals requiring special types of instruction. In carrying out the provisions of this section, the State Superintendent may appoint such personnel as may be needed:

(1) To aid county and city boards of education in the organization of classes for the handicapped.

(2) To recommend plans for the establishment of day classes in schools, home instruction and other methods of special education for handicapped persons, and outline the curriculum to be pursued.

(3) To provide the recommendation of competent medical and psychological

authorities as to the eligibility of handicapped persons to take said courses.

(4) To arrange where necessary for a handicapped child or adult person to attend school in an administrative unit or district other than the one in which he resides.

(5) To cooperate with the State Department of Public Welfare, the State Board of Health, the State schools for the blind and deaf, the State sanatoria, the children's hospitals, or other agencies concerned with the welfare and health of handicapped persons.

Any child or adult who has been determined to be physically or mentally handicapped shall be eligible for such special instruction as may be appropriate to his needs and which is available in the area of his residence. Classes of special education may be established and organized in any administrative unit or district which has one or more handicapped individuals when the approval of the State Superintendent of Public Instruction and the State Board of Education has been given. With the same approval, itinerant teachers may be employed to give special instruction.

The State Board of Education is authorized to provide from funds available for public schools a program of special education outlined by the State Department of Public Instruction and approved by the State Board of Education. The State Board is authorized to receive contributions and donations to be used in conjunction with any appropriations that may be made to carry out the program of special education. (1955, c. 1372, art. 23, s. 3.)

§ **115-201. Instruction in driver training and safety education.** — There shall be organized and administered under the general supervision of the State Superintendent of Public Instruction a program of driver training and safety education in the public schools of this State, said courses to be noncredit courses taught by instructors approved by the State Department of Public Instruction. (1953, c. 1196; 1955, c. 1372, art. 23, s. 4; 1959, c. 573, s. 16.)

Cross Reference. — See § 115-202 and note.

§ **115-202. Boards of education required to provide courses in operation of motor vehicles.**—(a) Course of Training and Instruction Required in Public High Schools.—The State Board of Education and county and city boards of education in this State are hereby required to provide as a part of the program of the public high schools in this State a course of training and instruction in the operation of motor vehicles and to make such courses available for all persons of provisional license age, including public school students, nonpublic school students and out-of-school youths (persons under 18 years of age whose physical and mental qualifications meet license requirements) in conformance with course requirements and funds made available under the provisions of G.S. 20-88.1 and/or as hereinafter provided.

(b) Inclusion of Expense in Budget.—The county and city boards of education of every administrative unit are hereby authorized to include as an item of instructional service and as a part of the current expense fund of the budget of the several high schools under their supervision, the expense necessary to install and maintain such a course of training and instructing eligible persons in such schools in the operation of motor vehicles.

(c) Appropriations. — The boards of county commissioners in the several counties of the State and the governing bodies of all municipalities having power to appropriate and raise money by taxation and otherwise are hereby authorized to appropriate funds necessary to pay the expenses necessary to install and maintain in any public high school under their supervision a course of training and instruction for eligible students in such schools in the operation of motor vehicles, whether or not the county board of education or administrative unit shall have included the cost of the same in its budget request when submitted for approval.

(d) How Moneys Appropriated May Be Provided. — The board of county commissioners in the several counties of the State and the governing bodies of all municipalities having power to appropriate money and to levy taxes and raise money are hereby authorized to provide the moneys appropriated pursuant to this section or pursuant to any other general, special or public-local act providing for such course of instruction and training in any public high school, by taxation, or by sale or rental of any real or personal property owned by such county or other taxing unit, or by use of any surplus funds on hand or acquired from any source; and the special approval of the General Assembly is hereby given for the levying of taxes for such purpose and for providing funds for such purpose by the other means herein mentioned.

(e) Content of Course; What Persons Eligible.—The words "a course of training and instruction for eligible persons in the operation of motor vehicles" as applied to this section shall be construed to mean such course of instruction in the operation of motor vehicles as shall be prescribed or approved by the State Department of Public Instruction, provided that every such course shall include actual operation of motor vehicles by the persons eligible for same, under the supervision of a qualified instructor. Only such persons of the completed age of 14 years and 6 months, and as shall be approved by the principal of the school, shall be eligible for such course of instruction, subject to rules and regulations prescribed by the State Department of Public Instruction.

(f) Acts Ratified and Confirmed.—The acts of all boards of county commissioners and the governing bodies of all municipalities, the acts of all county and city boards of education, and the acts of the State Board of Education heretofore done in connection with providing courses of training and instruction in the operation of motor vehicles in this State, including the appropriation and expenditure of funds for such purpose, are hereby ratified and confirmed. (1955, c. 817; 1965, c. 397.)

Editor's Note. — The 1965 amendment rewrote subsection (a), inserted "such" following "maintain" and substituted "persons" for "students" in subsection (b), substituted "persons" for "students" in the quoted language at the beginning of subsection (e), substituted "persons" for "students" preceding "eligible" near the end of the first sentence in that subsection, substituted "persons" for "students" and "approved" for "designated" in the last sentence of that subsection, and deleted "upon recommendation of two teachers" following "school" in such sentence.

This section, which became effective upon ratification, May 4, 1955, and § 115-201, which was ratified May 26, 1955, do not seem to be in conflict.

§ 115-203. Instruction in music education; supervisor and area supervisors.—There shall be organized and administered under the general supervision of the State Superintendent of Public Instruction a program of music education in the public schools of the State, and in the various communities in which said public schools are located. The Department of Public Instruction is hereby authorized to employ a supervisor of music education and six area music supervisors in its program of promotion of music education. It shall be the duty of the supervisors to train leaders from the teachers, to hold conferences throughout the State with groups of teachers and demonstrate proper methods of teaching music, and to organize and direct leadership in music programs in the schools and in the communities of the State. (1955, c. 1372, art. 23, s. 5.)

§ 115-204. Instruction in physical education and health education.—There shall be organized and administered under the general supervision of the State Superintendent of Public Instruction a comprehensive program of physical education and of health education including scientific instruction in the subjects of alcoholism and narcotism. It shall be the duty of teachers and principals in connection with this program to screen and observe all pupils in order to detect signs and symptoms of deviation from normal, and to record and report the results of their findings in accordance with the established policies and procedures and upon blanks furnished for this purpose. The State Superintendent of Public Instruction, with the State Board of Health cooperating, shall make rules and regulations regarding screening and observation by teachers and for medical and psychiatric examination of pupils attending the public schools. Correction of chronic remediable defects for underprivileged children may be paid out of school health funds appropriated by the General Assembly to the State Board of Education for allocation to school administrative units in accordance with policies agreed upon by the State Superintendent of Public Instruction and the State Board of Health, and as otherwise provided by law. The State Board of Health shall provide free dental treatment for as many underprivileged school children as possible each year. (1955, c. 1372, art. 23, s. 6.)

§ **115-205. Observance of special days.**—The State Superintendent of Public Instruction is hereby authorized and directed to provide suitable material for the appropriate observance in all the public schools of the State of all special days which are celebrated from year to year. All literature necessary for the proper observance of the days specified in this section shall be prepared by the Superintendent of Public Instruction and printed at the expense of the State. The Superintendent of Public Instruction may fix a later or an earlier date for the observance of any special day, the observance of which is required for a specific date, if it shall appear to him to be more convenient; and he may combine the programs so as to require the observance of any two or more of the special days at the same time.

The special days appropriate for observance in North Carolina are:

(1) North Carolina Day on October the twelfth.
(2) Temperance or Law and Order Day on the fourth Friday in January.
(3) Arbor Day on the Friday following the fifteenth day of March.
(4) The birthdays of George Washington, Robert Edward Lee, and Thomas Jonathan (Stonewall) Jackson.
(5) Veterans Day, Memorial Day, and such other days as may be deemed of educational and patriotic value to the children and citizens of the State. (1955, c. 1372, art. 23, s. 7.)

Cross Reference.—As to observance of "Indian Day" in the public schools, see § 147-18.

Sir Walter Raleigh Day.—Session Laws 1953, c. 1267, s. 4, provides: "The State Superintendent of Public Instruction is hereby empowered to designate a day to be observed in the public schools of North Carolina as the 'Sir Walter Raleigh Day'."

ARTICLE 25.

Selection and Adoption of Textbooks.

§ **115-206. Textbook needs are determined by course of study.**—When the State Board of Education shall have adopted, upon the recommendation of the State Superintendent of Public Instruction, a standard course of study for each grade in the elementary school and in the high school setting forth what subjects shall be taught in each grade and outlining the basal and supplementary books on each subject to be used in each grade, the Board shall proceed to select and adopt such textbooks. Textbooks adopted in accordance with the provisions of this article shall be used by the public schools of the State. Such supplementary books as may be adopted shall neither displace nor be used to the exclusion of basal books. (1955, c. 1372, art. 24, s. 1; 1959, c. 693, s. 1.)

§ **115-207. State Board of Education to select and adopt textbooks.**—The Board is hereby authorized to select and adopt for the exclusive use in the public schools of North Carolina, textbooks, publications, and instructional materials needed for instructional purposes in each grade and on each subject matter in which instruction is required by law. It shall adopt for a period of not less than five years, two or more basal primers for the first grade, two or more basal readers for each of the first three grades, one or more basal readers for grades four through eight inclusive, and one or more basal books or series of books on all other subjects required to be taught in the first eight grades, and one or more basal books for all subjects taught in the high school: Provided, further, that the State Board of Education may enter into contract with a publisher for a period of less than five years, if any advantage may accrue to the schools as a result of a shorter contract than five years. (1955, c. 1372, art. 24, s. 2; 1959, c. 693, s. 2; 1965, c. 584, s. 18.)

Editor's Note. — The 1965 amendment inserted "or more" preceding "basal" throughout the section and deleted two provisos.

§ **115-208. Appointment of Textbook Commission; members and chairman; compensation.**—The Governor, upon the recommendation of the State Superintendent, shall appoint a Textbook Commission of twelve members who shall hold office for four years, or until their successors are elected and qualified. The Governor shall fill all vacancies by appointment for the unexpired term. Seven of the members shall be outstanding teachers or principals in the elementary grades; five shall be outstanding teachers or principals in the high school grades: Provided, that one of the members may be a county or city superintendent. The Commission shall elect a chairman, subject to the approval of the State Superintendent. The members shall be paid a per diem and expenses as approved by the Board. The reenactment of this section shall not have the effect of vacating the appointment or changing the terms of any of the Commissioners heretofore appointed. (1955, c. 1372, art. 24, s. 3.)

§ **115-209. Commission to evaluate books offered for adoption.**—The members of the Commission who are teachers or principals in the elementary grades shall evaluate all textbooks offered for adoption in the elementary grades. The members who are teachers or principals in the high schools shall evaluate all books offered for adoption in the high school grades.

Each member shall examine carefully and file a written evaluation of each book offered for adoption.

Special consideration shall be given in the evaluation report as to the suitability of the book to the grade for which it is offered, the content or subject matter, and other criteria prescribed by the Board.

All evaluation reports shall be signed by the member making the report and filed alphabetically with the Board not later than a day certain as fixed by the Board when the call for adoption is made. (1955, c. 1372, art. 24, s. 4.)

§ **115-210. Selection of textbooks by Board.**—At the next meeting of the Board following the filing of the reports, the Textbook Commission shall meet with the Board and jointly examine the reports. The Board shall then select from the books evaluated such books which the Board believes will meet the teaching requirements of the North Carolina public schools in the grade or grades for which they are offered. The Board shall then request sealed bids from the publishers of all books so selected.

The Board shall make all needful rules and regulations with reference to asking for bids, notifying publishers as to calls for adoption, execution and delivery of contracts, requirement of performance bonds, cancellation causes, and such other material matters as may affect the validity of the contracts. (1955, c. 1372, art. 24, s. 5.)

§ **115-211. Adoption of textbooks and contracts with publishers.**—The sealed bids of the publishers shall be opened at the next regular meeting of the Board in the presence the Board. The Board may then adopt the books required by the course of study and enter into a contract with the publisher for such adopted books. The Board may refuse to adopt any of the books offered at the prices bid and call for new bids: Provided, that when bids are accepted by the Board and a contract entered into, the contract may require, in the discretion of the Board, that the total sales of each book in the State of North Carolina be reported annually to the Board. (1955, c. 1372, art. 24, s. 6.)

§ **115-212. Continuance and discontinuance of contracts with publishers; procedure for change of textbooks.**—At the expiration of existing or future contracts, the Board may, upon approval of the publisher, continue the contract for any particular book or books indefinitely, that is, for a period not less than one nor more than five years. The Superintendent may at any time recommend to the Board that a given book is unsatisfactory for the schools, whereupon the Board may call for a new selection and adoption.

In the event a change of any textbook is required by vote of the Board, the publisher shall be given ninety (90) days' notice prior to the first day of May, at the expiration of which time the Board is authorized to adopt a new book or books on said subject. The publisher desiring to terminate his contract which has been extended beyond the original contract period shall give notice to the Board ninety (90) days prior to the first day of May. The Board may then proceed to a new adoption. (1955, c. 1372, art. 24, s. 7.)

§ **115-213. Advice of Attorney General as to form and legality of contracts.**—All contracts between the Board and publishers of textbooks shall be subject to the approval of the Attorney General as to form and legality.

In the event that any publisher shall fail to keep his contract as to prices, distribution, adequate supply of books in the edition adopted, or in any other way violates the terms of his contract, the Attorney General shall bring suit against such publisher when requested by the Board for such an amount as may be sufficient to enforce the contract or to compensate the State because of the loss sustained by failure to keep said contract. (1955, c. 1372, art. 24, s. 8.)

§ **115-214. Publishers to register all agents or employees.** — Publishers submitting books for adoption shall register in the office of the State Superintendent of Public Instruction all agents or other employees of any kind authorized to represent said company in the State, and this registration list shall be open to the public for inspection. (1955, c. 1372, art. 24, s. 9.)

§ **115-215. Sale of books at lower price elsewhere reduces price to State.**—Every contract made by the Board with the publisher of any school textbook on the adopted list in this State shall be deemed to have written therein a condition providing that in the event said publisher during the life of his contract with this State shall contract with another state, or with any county, city, town, or other municipality, or shall place said textbook on sale anywhere in the United States for a less price than that in his contract with the State of North Carolina, said publishers shall immediately furnish said textbooks to this State at a price not to exceed that for which the book is furnished, sold, or placed on sale in any other state, or in any other county, city, town, or municipality. (1955, c. 1372, art. 24, s. 10.)

Article 26.

Providing Basal and Supplemental Textbooks and Instructional Materials.

§ **115-216. Powers and duties of State Board of Education.** — The children in the public schools of the State may be provided uniformly with free basal textbooks within the appropriation of the General Assembly for that purpose, and with supplementary textbooks and instructional materials at a minimum annual rental, the State Board of Education is hereby authorized and directed to administer a fund and to establish rules and regulations necessary to:

(1) Acquire by contract or purchase such textbooks and instructional supplies which are or may be on the adopted list of the State of North Carolina, and to purchase materials, supplies, and equipment which the Board may find necessary to meet the need of the public school system of the State and to carry out the provisions of this article.

(2) Provide a system of distribution of said textbooks and supplies to the children in the public schools of the State, and distribute such books as are provided under the rental system without the use of any depository other than some agency of the State, to use warehouse facilities for the distribution of all the supplies, materials, and equipment authorized to be purchased in subdivision (1) hereof.

(3) Provide for the free use, including the proper care and return thereof, of elementary basal textbooks to such grades, including the eighth grade of the elementary public schools of North Carolina as may be determined by the Board. The title to said books shall be vested in the State: Provided, that the Board may furnish basal elementary textbooks on a rental basis in any or all elementary grades when it is deemed necessary.

(4) Provide books for high school children in the public high schools of North Carolina on a rental basis. Said annual rental charge shall be collected in an amount not to exceed one third of the cost of said textbooks: Provided, that free basal books may be furnished to high school children if sufficient funds are available and if the Board finds it advisable to take such action.

(5) Provide supplementary readers and other supplementary books for the elementary children in the public elementary schools of North Carolina on a rental basis. Said annual rental charge shall be collected in in an amount not to exceed one third of the cost of said textbooks: Provided, that the Board shall not charge a rental fee for books, supplies, and materials used in the public schools in excess of the actual cost to the State, including the handling and administration of such rentals. Provided, further, within funds available the Board may provide for the free use of supplementary readers and other supplementary books in the public elementary schools.

(6) Provide and distribute all blanks, forms, and reports necessary to keep a careful record of all the books, including their use, state of repair and such other information as the Board may require.

(7) Buy and sell library books to be placed in the public schools of this State from a list to be selected by the State Superintendent of Public Instruction with the approval of the Board and to be placed in such schools as may be designated by the Board: Provided, that such library books shall be purchased in accordance with the rules and regulations duly promulgated by the Board.

(8) Provide for the use of said textbooks without charge to the indigent children of the State.

(9) Cause an annual audit to be made of all transactions of the Board in administering said book funds, which audit shall show separately all items of cost for furnishing free basal textbooks and all other items of cost and all rentals collected on rental books. (1955, c. 1372, art. 25, s. 1; 1965, c. 584, s. 19.)

Editor's Note. — The 1965 amendment added the second proviso at the end of subdivision (5).

§ **115-217. Proper care of books; right to purchase.**—In the operation and management of both the free basal textbook system and the rental supplementary textbook system, plans shall be carried out whereby the same books, as far as possible, are assigned to the same school from year to year to the end that all children may be taught the proper care of books and that the cost of books for every school may be the more accurately determined. Those schools which reduce the cost of books by proper care may be given the advantage in additional new books to the amount of the saving: Provided, that nothing in this article shall be construed to prevent the purchase of textbooks needed for any child in the public schools of the State from said Board by any parent, guardian, or person in loco parentis. (1955, c. 1372, art. 25, s. 2.)

§ **115-218. Legal custodians of books furnished by State.**—County boards of education of county administrative unit and city boards of education of city administrative unit are hereby designated the legal custodians of all books furnished by the State, either for free use or on a rental basis. It shall be the duty of the said boards of education to provide adequate and safe storage facilities for the proper care of said books. (1955, c. 1372, art. 25, s. 3.)

§ **115-219. Fumigation and disinfection of books.**—The State Superintendent of Public Instruction, in conjunction with the State Board of Health, shall adopt rules and regulations governing the use of fumigation and disposal of textbooks from quarantined homes and for the regular disinfection of all textbooks used in the public schools of the State: Provided, that said rules shall be attached to any rules and regulations that the State Board of Education may promulgate. (1955, c. 1372, art. 25, s. 4.)

§ **115-220. County and city units may withdraw from State system.**—Whenever any county or city administrative unit has paid over to the State Board of Education, in rentals, a sum equal to the price fixed by said Board for the sale of rental textbooks, said county or city administrative unit may, at its option, with the approval of the Board, withdraw from the textbook rental system set up under rules and regulations adopted by the Board, and upon such withdrawal shall become the absolute owner of all such textbooks for which the purchase price has been paid in full to the said Board. (1955, c. 1372, art. 25, s. 5.)

§ **115-221. Rentals paid to State treasury; for use of only those paying rentals.**—All sums of money collected as rentals under the provisions of this article on state-owned books shall be paid monthly as collected into the State treasury, to be entered as a separate item known as the "State Textbook Rental Fund," and shall be disbursed only by order of the State Board of Education. When all advances made from the general fund of the State for setting up said textbook rental system have been paid from rentals collected, any surplus funds shall be used only to reduce the annual rentals charged and to bear the expense of operating the State textbook rental system: Provided, that, in the discretion of the Board, such surplus funds and other revenues of the textbook rental system may be used only for providing additional textbooks, library books, and other instructional materials for the use of the pupils who pay the rental fees. (1955, c. 1372, art. 25, s. 6.)

§ **115-222. Free book system separate from rental system.** — The system of providing free basal textbooks for both elementary and high schools, when provided, shall be separate from the rental textbooks and supplementary book system, and shall depend upon appropriations from the general fund of the State for both the cost of the books and for operating and administering the system. (1955, c. 1372, art. 25, s.. 7.)

§ **115-223. Duties and authority of superintendents of local administrative units; withholding salary for failure to comply with section.**—It shall be the duty of the superintendent of each administrative unit as an official agent of the State Board of Education to administer the provisions of this article and the rules and regulations of the Board insofar as said article and said rules and regulations may apply to said unit. The superintendent of every administrative unit shall have authority to require the cooperation of principals and teachers to the end that the children may receive the best possible service, and that all the books and moneys may be properly accounted for. In the event any principal or teacher shall fail to comply with the provisions of this section, it shall be the duty of the superintendent to withhold the salary vouchers of said principal or teacher until the duties imposed hereby have been performed.

In the event any superintendent shall fail to comply with the provisions of this section, it shall be the duty of the State Board of Education and the State Superintendent of Public Instruction to withhold salary vouchers of said superintendent and the State Treasurer shall not pay same until the duties imposed hereby have been performed, and it shall be the duty of the State Superintendent as secretary of the State Board of Education to notify the State Board of Education and the State Treasurer in the event any superintendent shall fail to comply with the provisions of this section, and no payment shall be made until notice has been received from the State Superintendent as secretary of the State Board of Education that the provisions of this section have been complied with. (1955, c. 1372, art. 25, s. 8.)

§ **115-224. County and city boards authorized to operate local systems.**—Any county or city board of education now operating a textbook rental system, or any such board that may hereafter withdraw from the State system under the provisions of G.S. 115-220 to operate its own system, shall be permitted to continue, or to operate, such local rental system without regulation from the State Board of Education except as provided in G.S. 115-225.

County and city boards of education are hereby authorized and empowered to make all necessary rules and regulations concerning the operation of local rental systems to provide the children of their administrative units with the advantages of an adequate supply of basal and supplementary textbooks, library books, and appropriate instructional materials. For these purposes, funds appropriated in the current expense and in the capital outlay budgets of such units may be used. (1955, c. 1372, art. 25, s. 9.)

§ **115-225. Rental fees charged by administrative units operating local system.**—County and city boards of education shall charge rental fees in accordance with schedules submitted to and approved by the State Board of Education. The receipt given pupils upon the payment of any book rentals shall show separately, the fee collected for basal textbooks, the fee collected for supplementary textbooks, the fee collected for library books, and the fee collected for instructional supplies. (1955, c. 1372, art. 25, s. 10.)

§ **115-226. Boards must keep complete records and audit same; unlawful to use book funds for other purposes.**—It shall be the duty of such county and city boards of education as may establish a book fund and a rental system for their local units to keep an accurate and complete record of all receipts and disbursements made from such fund, and to cause such records and accounts thereof to be audited in July of each and every year and to file a copy of said audit with all the authorities required by law in the case of the annual audit of county and city boards of education.

It shall be unlawful for any county or city board of education to use any part of the funds so provided for any purpose, even temporarily, other than the purposes for which said fund is established. (1955, c. 1372, art. 25, s. 11.)

§ **115-227. Boards may purchase books from State; patrons from boards.**—County and city boards of education are hereby authorized to purchase from the State Board of Education, basal and supplementary textbooks, library books, and instructional supplies for use in a local rental system. Any patron of the public schools may purchase textbooks from his county or city board of education at cost. (1955, c. 1372, art. 25, s. 12.)

§ **115-228. How local rental funds handled and paid out.**—All school book rental fees collected by county and city boards of education shall be deposited as collected with the county or city treasurer, and shall be paid out only on vouchers signed by the chairman and secretary of such board. (1955, c. 1372, art. 25, s. 13.)

ARTICLE 27.

Vocational Education.

§ **115-229. Acceptance of benefits of Federal Vocational Education Act.**—The State of North Carolina hereby accepts all the provisions and benefits of acts passed by the Congress of the United States providing federal funds for states for vocational and technical education programs: Provided, however, that the State Board of Education is not authorized to accept any such funds upon any condition that the public schools of this State shall be operated contrary to any provision of the Constitution or statute of this State. (1955, c. 1372, art. 26, s. 1; 1963, c. 448, s. 24.)

Editor's Note. — The 1963 amendment substituted the reference to acts of Congress "providing federal funds for states for vocational and technical education programs" for a reference, by title, to a specific act.

§ **115-230. Powers and duties of Board.** — The State Board of Education shall have all necessary authority to cooperate with the United States Office of Education in the administration of the federal acts assisting vocational and technical education, to administer any legislation pursuant thereto enacted by the State of North Carolina, and to administer the funds provided by the federal government and the State of North Carolina for the promotion of vocational education. The Board shall have full authority to formulate plans for the promotion of vocational education in such subjects as are an essential and integral part of the public school system of education of the State of North Carolina, and to provide for the preparation of teachers in such subjects. It shall have full authority to fix the compensation, subject to the approval of the Personnel Department, of such officials and assistants as may be necessary to administer the federal act and this article for the State of North Carolina, and to pay such compensations and other necessary expenses of administration from funds appropriated. It shall have authority to make studies and investigations relating to vocational education in such subjects; to publish the results of such investigations, and to issue other publications as seem necessary to the Board; to promote and aid in the establishment by local communities of schools, departments, or classes giving instruction in such subjects; to cooperate with local communities in the maintenance of such schools, departments, or classes; to prescribe qualifications for teachers, directors, and supervisors of such subjects; to cooperate in the maintenance of classes supported and controlled by public institutions for the preparation of teachers, directors and supervisors of such subjects, or to maintain such classes under its own direction and control; to establish and determine by general regulations the qualifications to be possessed by persons engaged in the training of vocational teachers. (1955, c. 1372, art. 26, s. 2; 1959, c. 915, s. 2; 1963, c. 448, s. 24.)

Editor's Note. — The 1963 amendment substituted "federal acts assisting vocational and technical education" for "Federal Vocational Educational Act" in the first sentence and deleted the words "in agricultural subjects, trade and industrial subjects, and home economics subjects" at the end of the first sentence. It also deleted, at the end of the section, provisions relating to industrial education centers.

§ 115-230.1. Development of Industrial Education Program. — The State Board of Education is authorized and directed to develop for the public schools of the State a more diversified and comprehensive program of instruction in basic work skills, applied economics, and industrial education, and to introduce in various public schools in the State such program on an experimental basis under regulations, standards, and procedures promulgated by the Board. The Board may provide for the in-service training or retraining of vocational and other teachers in cooperation with institutions of higher education in preparation for the program herein authorized. The Board may provide, under standards prescribed by it, funds, on a matching basis or otherwise, for both current expense costs and equipment necessary in the conduct of the program. The title to any equipment provided a local county or city board of education for this purpose shall be held by the county or city board of education to which the funds are allocated. (1963, c. 841.)

§ 115-231. State Superintendent to enforce article. — The State Superintendent of Public Instruction shall serve as executive officer of the State Board of Education, and shall designate, by and with the advice and consent of the State Board of Education, such assistants as may be necessary to properly carry out the provisions of this article. The State Superintendent shall also carry into effect such rules and regulations as the Board may adopt, and shall prepare such reports concerning the condition of vocational education in the State as the Board may require. (1955, c. 1372, art. 26, s. 3.)

§ 115-232. State Appropriation for vocational education. — The State of North Carolina appropriates out of the general fund a sum of money for each fiscal year at least equal to the maximum sum which may be allotted to the State of North Carolina from the federal treasury under the provisions of the federal vocational and technical education acts and amendments thereto: Provided, that only such portion of the above State appropriation shall be used as may be necessary to carry on the work outlined in this article to meet the federal requirements or to meet requirements approved by the State Board of Education. (1955, c. 1372, art. 26, s. 4; 1963, c. 448, s. 24.)

Editor's Note. — The 1963 amendment substituted "federal vocational and technical education acts" for "Smith-Hughes Act" near the middle of the section.

§ 115-233. State Treasurer authorized to receive and disburse vocational education funds.—The State Treasurer is hereby designated and appointed custodian of all moneys received by the State from the appropriation made by said act of Congress or any other acts of Congress passed subsequent thereto, and he is authorized to receive and to provide for the proper custody of the same and to make disbursements thereof in the manner provided for in said acts and for the purpose therein specified. He shall also pay out moneys appropriated by the State of North Carolina for the purpose of carrying out the provisions of this article upon the order of the State Board of Education. (1955, c. 1372, art. 26, s. 5.)

§ 115-234. Cooperation of county and city authorities with State Board.—County and city boards of education may cooperate with the State Board of Education in the establishment of classes giving instruction in vocational subjects, and may use moneys raised by public taxation in the same manner as moneys are used for other public school purposes: Provided, that vocational teachers shall be employed in the same manner as are other public school teachers. (1955, c. 1372, art. 26, s. 6; 1963, c. 448, s. 24.)

Editor's Note. — The 1963 amendment substituted "classes giving instruction in vocational subjects" for "vocational schools or classes giving instruction in agricultural subjects, or trade and industrial subjects, or in home economics subjects and distributive education" near the middle of the section.

§ 115-235. High schools offering vocational agriculture authorized to acquire lands for forest study.—(a) County and city boards of education are hereby authorized and empowered to acquire by gift, purchase or lease for not less than twenty years, a parcel of woodland or open land of not more than twenty acres suitable for forest planting or other vocational training.

(b) Each deed for such land shall be made to "The . . . . County Board of Education" for schools that are in the county administrative unit, and to "The . . . . City Board of Education" for city schools undertaking forest study or other vocational training, and the title to such land shall be examined and approved by the county attorney.

(c) Any school forest thus acquired shall be placed under the management of the department of vocational agriculture of the school, to be handled in accordance with plans approved by some available publicly employed forester. (1955, c. 1372, art. 26, s. 7.)

Article 28.

Textile Training School.

§§ 115-236 to 115-239: Transferred to §§ 115A-39 to 115A-42 by Session Laws 1963, c. 448, s. 30.

Article 29.

Vocational Training in Building Trades.

§ 115-240. Use of funds for purchase of building sites, materials, and for acquiring skilled services.—Local school administrative units are authorized to use supplementary tax funds or other local funds available for the support of vocational education to purchase suitable building sites on which dwellings or other buildings are to be constructed by vocational building trades classes. Such school administrative units are authorized to use such funds to pay the fees necessary in securing and recording deeds to such property and to purchase all materials needed to complete the construction of buildings by vocational building trades classes: Provided, however, that the cost of materials for any one project shall not exceed seven thousand dollars ($7,000.00) and not more than one project may be undertaken within one school year.

Local school administrative units are authorized to expend such funds in acquiring skilled services, including electrical, plumbing, heating, sewer, water, transportation, grading and landscaping needed in the construction and completion of buildings beyond those which can be supplied by the students in such vocational trades classes. (1955, c. 1372, art. 28, s. 1.)

§ 115-241. Sale of buildings constructed by building trades classes; disposition of proceeds.—When any such building is completed, the governing body of the local school administrative unit, upon finding that such building is not needed for public school purposes, shall sell the same at public auction in the same manner and by the same procedure as is provided in subsection (a) of G.S. 115-126. The proceeds from the sale of such projects may be kept in a revolving fund by said unit to be used in succeeding years to finance similar building projects: Provided, that the board of education of the administrative unit may allocate from the profits from such projects funds to purchase equipment needed by the building trades classes. In case this type of activity is abandoned, the moneys accumulated shall be paid into the school fund of the county or city administrative unit from which the original appropriation was made. (1955, c. 1372, art. 28, s. 2.)

§ 115-242. Advisory committee on construction of projects.—The board of education of the administrative unit in which the proposed project of construction is to be undertaken shall appoint an advisory committee composed of five persons residing within the administrative unit and no project of a nature described in this article shall be undertaken without the approval of a majority of the advisory committee. (1955, c. 1372, art. 28, s. 3.)

Article 30.

Vocational Rehabilitation of Persons Disabled in Industry or Otherwise.

§ **115-243. Acceptance of federal aid.** — The State of North Carolina hereby accepts all of the provisions and benefits of an act passed by the Congress of the United States to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment, approved as Public Law 565, August third, one thousand nine hundred fifty-four. Provided, however, that the State Board of Education is not authorized to accept any such funds upon any condition that the public schools of this State shall be operated contrary to any provision of the Constitution or statute of this State. (1955, c. 1372, art. 29, s. 1.)

§ **115-244. Authority to cooperate and plan program of rehabilitation.**—The State Board of Education shall have all necessary authority to cooperate with the Federal Office of Vocational Rehabilitation in the administration of the act of Congress providing for the vocational rehabilitation of persons injured in industry or otherwise; to administer any legislation pursuant thereto enacted by the State of North Carolina; and to administer the funds provided by the federal government and the State of North Carolina. The Board shall have full authority to formulate plans for the promotion of vocational rehabilitation, and it shall have full authority, subject to the approval of the Personnel Department, to fix the compensation of such officials and assistants as may be necessary to administer the federal act and this article for the State of North Carolina; and to pay such compensation and other expenses of administration as are necessary from funds appropriated under this law. It shall have authority to make studies and investigations relating to vocational rehabilitation; to publish the results of such investigations and to issue other publications as seem necessary to the Board; to promote and aid in the establishment of schools, departments, or classes giving instruction in vocational subjects for rehabilitation purposes; and to prescribe qualifications for the teachers, directors, and supervisors of such subjects.

The State Board of Education, in order to carry out the provisions of this article, shall secure the cooperation of federal, State, and local health agencies in getting a complete report of any persons under treatment in hospitals, clinics, dispensaries, health officers and private physicians, for any injury or disease that may render them permanently, physically, and vocationally handicapped to such an extent that they are, or will be, unable to support themselves. (1955, c. 1372, art. 29, s. 2.)

Article 31.

Private Business, Trade and Correspondence Schools.

§ **115-245. Definitions.**—As used in this article:

(1) "Board of education" means the North Carolina State Board of Education.

(2) "Correspondence school" means an educational institution privately owned and operated by an owner, partnership or corporation conducted for the purpose of providing, by correspondence, for a consideration, profit, or tuition, systematic instruction in any field or teaches or instructs in any subject area through the medium of correspondence between the pupil and the school, usually through printed or typewritten matter sent by the school and written responses by the pupil.

(3) "Persons" means any individual, association, partnership or corporation, and includes any receiver, referee, trustee, executor, or administrator as well as a natural person.

(4) "Private business school" or "business school" or "school" means an educational institution privately owned and operated by an owner, partnership or corporation, offering business courses for which tuition is charged, in such subjects as typewriting, shorthand (manual or machine), filing and indexing, receptionist's duties, key-punch, teletype, penmanship, bookkeeping, accounting, office machines, business arithmetic, English, business letter writing, salesmanship, personality development, leadership training, public speaking, real estate, insurance, traffic management, business psychology, economics, business management, and other related subjects of a similar character or subjects of general education when they contribute values to the objective of the course of study. Classes in any of the subjects herein referred to which are taught or coached in homes or elsewhere to five or less students are not included in the term "school" and shall be exempt from the requirements of this article.

(5) "Private trade school" means an educational institution privately owned and operated by an owner, partnership or corporation, offering classes conducted for the purpose of teaching, for profit or for a tuition charge, any trade, technical, mechanical or industrial occupation or teaching any or several of the subjects needed to train youths or adults in the skills, technical knowledge, related industrial information, and job judgment, necessary for success in one or more skilled trades, industrial occupations or related occupations.

(6) "Superintendent" means the North Carolina State Superintendent of Public Instruction. (1955, c. 1372, art. 30, ss. 1, 2; 1957, c. 1000; 1961, c. 1175, s. 1.)

Purpose of Article. — The primary purpose of this article is to control and regulate certain private schools — specifically business, trade and correspondence schools. State v. Williams, 253 N.C. 337, 117 S.E.2d 444 (1960).

§ **115-246. Exemptions.** — It is the purpose of this article to include all private schools operated for profit provided that the following schools shall be exempt from the provisions of this article:

(1) Nonprofit schools conducted by bona fide eleemosynary or religious institutions.

(2) Schools maintained or classes conducted by employers for their own employees where no fee or tuition is charged.

(3) Courses of instruction given by any fraternal society, civic club, or benevolent order, which courses are not operated for profit.

(4) Any school for which there is another legally existing licensing board in this State.

(5) Any established university, professional, or liberal arts college, public or private high school approved by the State Department of Public Instruction, or any State institution which has heretofore offered, or which may hereinafter offer one or more courses covered in this article, provided that the tuition fees and charges, if any, made by such university, college, high school, or State institution shall be collected by their regular officers in accordance with the rules and regulations prescribed by the board of trustees or governing body of such university, college, high school, or State institution; but provisions of the article shall apply to all business schools, trade schools, or correspondence schools or branch schools, as defined in this article, and operated within the State of North Carolina as such institutions, except schools

for which there are other legally existing licensing boards. (1955, c. 1372, art. 30, ss. 1, 2; 1957, c. 1000; 1961, c. 1175, s. 2.)

§ **115-247. State Board of Education to administer article; issuance of diplomas by schools; investigation and inspection; regulations and standards.** — (a) The Board of Education, acting by and through the Superintendent of Public Instruction, shall have authority to administer and enforce this article and to issue licenses to private schools and educational institutions, as the same are defined herein, whose sustained curriculum is of a grade equal to that prescribed for similar public schools and educational institutions of the State and which have met the standards set forth by the Board of Education, including but not limited to course offerings, adequate facilities, financial stability, competent personnel and legitimate operating practices.

(b) Upon approval by the Board of Education, any such private school or educational institution may by and with the approval of said Board of Education issue certificates and diplomas.

(c) The Board of Education, acting by and through the Superintendent of Public Instruction, shall formulate the criteria and the standards evolved thereunder for the approval of such schools or educational institutions, provide for adequate investigations of all schools applying for a license and issue licenses to those applicants meeting the standards fixed by the Board, maintain a list of schools approved under the provisions of this article which list shall be available for the information of the public, and provide for periodic inspection of all schools licensed under the provisions of this article. Through periodic reports required of licensed schools or branch schools and by inspections made by authorized representatives of the State Board of Education, the State Board of Education shall have general supervision over business, trade and correspondence schools in the State, the object of said supervision being to protect the health, safety and welfare of the public by having the licensed business, trade and correspondence schools maintain adequate, safe and sanitary school quarters, sufficient and proper facilities and equipment, sufficient and qualified teaching staff, and satisfactory programs of operation and instruction, and to have the school carry out its advertised promises and contracts made with its students and patrons. To this end the State Board of Education is authorized to issue such regulations and standards not inconsistent with the provisions of this article as are necessary to administer the provisions of this article. (1955, c. 1372, art. 30, s. 4; 1957, c. 1000; 1961, c. 1175, s. 3.)

Intent of Section.—It is the intent of this section that the State Board of Education pass upon the adequacy of the equipment, curricula and instructional personnel of the schools and protect students from fraud and breach of contract on the part of the schools and their agents and representatives. State v. Williams, 253 N.C. 337, 117 S.E.2d 444 (1960), decided under similar provisions of former law.

§ **115-248. License required; application for license; school bulletins; requirements for issuance of license; license restricted to courses indicated; supplementary applications.** — (a) No person shall operate, conduct or maintain or offer to operate in this State a private school or educational institution as defined herein unless a license is first secured from the State Board of Education issued in accordance with the provisions of this article and the rules and regulations promulgated by the Board of Education under the authority of § 115-247. The license, when issued, shall constitute the formal acceptance by the Board of Education of the educational programs and facilities of each private school approved.

(b) Application for a license shall be filed in the manner and upon the forms prescribed and furnished by the Superintendent of Public Instruction for that purpose. Such application shall be signed by the applicant and properly verified and shall contain such of the following information as may apply to the particular school or branch school, for which a license is sought:

(1) The title or name of the school or classes, together with the name and address of the ownership and of the controlling officers thereof;
(2) The general field of instruction;
(3) The place or places where such instruction will be given;
(4) A specific listing of the equipment available for instruction in each field;
(5) The qualifications of instructors and supervisors;
(6) Financial resources available to equip and to maintain the school or classes;
(7) And such additional information as the Board may deem necessary to enable it to determine the adequacy of the program of instruction and matters pertaining thereto. Each application shall be accompanied by a copy of the current bulletin or catalogue of the school which shall be in published form and certified by an authorized official of the school as being true and correct in content and policy. The school bulletin shall contain the following information:
    a. Identifying data, such as volume number and date of publication.
    b. Names of the institution and its governing body, officials and faculty.
    c. A calendar of the institution showing legal holidays, beginning and ending date of each quarter, term or semester, and other important dates.
    d. Institution's policy and regulations relative to leave, absences, class cuts, make-up work, tardiness and interruptions for unsatisfactory attendance.
    e. Institution's policy and regulations on enrollment with respect to enrollment dates and specific entrance requirements for each course.
    f. Institution's policy and regulations relative to standards of progress required of the student by the institution. (This policy will define the grading system of the institution; the minimum grades considered satisfactory; conditions for interruption for unsatisfactory grades or progress and description of the probationary period, if any, allowed by the institution; and conditions of reentrance for those students dismissed for unsatisfactory progress. A statement will be made regarding progress records kept by the institution and furnished the student).
    g. Institution's policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct.
    h. Detailed schedule for fees, charges for tuition, books, supplies, tools, student activities, laboratory fees, service charges, rentals, deposits, and all other charges.
    i. Policy and regulations of the institution relative to the refund of the unused portion of tuition, fees and other charges in the event the student does not enter the course or withdraws or is discontinued therefrom.
    j. A description of the available space, facilities and equipment.
    k. A course outline for each course for which approval is requested, showing subjects or units in the course, type of or skill to be learned, and approximate time and clock hours to be spent on each subject or unit.
    l. Policy and regulations of the institution relative to granting credit for previous educational training.

(c) After due investigation and consideration on the part of the Board as provided herein, a license shall be issued to the applicant when it is shown to the satisfaction of said Board that said applicant, school, programs of study or courses are found to have met the following criteria:

(1) The courses, curriculum and instruction are consistent in quality, content and length with similar courses in public schools and other private schools in the State, with recognized accepted standards.

(2) There is in the institution adequate space, equipment, instructional material and instructor personnel to provide training of good quality.

(3) Education and experience qualifications of director, administrators and instructors are adequate.

(4) The institution maintains a written record of the previous education and training of the student.

(5) A copy of the course outline, schedule of tuition, fees and other charges, regulations pertaining to absences, grading policy and rules of operation and conduct will be furnished the student upon enrollment.

(6) Upon completion of training, the student is given a certificate or diploma by the institution indicating the approved course and indicating that training was satisfactorily completed.

(7) Adequate records as prescribed by the State Board of Education are kept to show attendance and progress or grades and satisfactory standards relating to attendance, progress and conduct are enforced.

(8) The school complies with all local, city, county, municipal, State and federal regulations, such as fire codes, building and sanitation codes. The State Board of Education may require such evidence of compliance as is deemed necessary.

(9) The school is financially sound and capable of fulfilling its commitments for training.

(10) The school does not exceed its enrollment limitation as established by the State Board of Education.

(11) The school does not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission or intimation.

(12) The school's administrators, directors, owners and instructors are of good reputation and character.

(13) Such additional criteria as may be deemed necessary by the Board.

(d) Any license issued shall be restricted to the programs of instruction or courses specifically indicated in the application for a license. The holder of a license shall present a supplementary application as may be directed by the Superintendent for approval of additional programs of instruction or courses in which it is desired to offer instruction during the effective period of the license. (1955, c. 1372, art. 30, ss. 3, 4; 1957, c. 1000; 1961, c. 1175, s. 4.)

§ 115-249. Duration and renewal of licenses; notice of change of ownership, administration, etc.; license not transferable.—(a) All licenses issued shall expire on June 30 next following the date of issuance.

(b) Licenses shall be renewable annually on July 1, provided an application for the renewal of the license has been filed in the form and manner prescribed by the Board and the renewal fee has been paid; also, provided the school and its courses, facilities, faculty and all other operations are found to meet the criteria set forth in the requirements for a school to secure an original license.

(c) After a license is issued to any school by the State Board of Education on the basis of its application, it shall be the responsibility of said school to notify immediately said Board of any changes in the ownership, administration, location, faculty, the instructional program or other changes as may affect significantly the course of instruction offered.

(d) In the event of the sale of such school, the license already granted to the original owner or operators thereof shall not be transferable to the new ownership or operators. (1955, c. 1372, art. 30, s. 4; 1957, c. 1000; 1961, c. 1175, s. 5.)

§ 115-250. "Commercial Education Fund"; refund of fees.—The fees and licenses collected under this section shall be placed in a special fund to be designated the "Commercial Education Fund" and shall be used under the supervision and direction of the State Board of Education for the administration of this article. No license fee shall be refunded in the event the application is rejected or the license suspended or revoked. (1961, c. 1175, s. 6.)

§ 115-251. Suspension, revocation or refusal of license; notice and hearing; judicial review; grounds.—(a) The Board of Education, acting by and through the Superintendent of Public Instruction, shall have the authority to refuse to issue a license and to suspend or revoke a license theretofore issued but before denying any such license, including the renewal thereof, and before suspending or revoking any license theretofore issued, he shall afford the applicant or holder of any such license an opportunity to be heard in connection therewith in person or by counsel and at least thirty days prior to the date set for a hearing on any such matter shall notify in writing the applicant for or the holder of any such license of the date of said hearing and assign therein the grounds for the action contemplated to be taken and as to which inquiry shall be made on the date of such hearing.

(b) The action of the Board of Education acting by and through the Superintendent of Public Instruction in refusing to grant a license or to renew a license, or in suspending or revoking a license, shall be subject to judicial review in all respects according to the provisions and procedure set forth in article 33 of chapter 143 of the General Statutes of North Carolina.

(c) The Board of Education, acting by and through the Superintendent of Public Instruction, shall have the power to refuse to issue or renew any such license and to suspend or revoke any such license theretofore issued in case it finds:

(1) That the applicant for or holder of such a license has violated any of the provisions of this article or any of the rules and regulations promulgated thereunder; or

(2) That the applicant for or holder of such a license has knowingly presented to the State Board of Education false or misleading information relating to approval; or

(3) That the applicant for or holder of such a license has failed or refused to permit authorized representatives of the State Board of Education to inspect the school, or has refused to make available to them at any time upon request full information pertaining to matters within the purview of the Board of Education under the provisions of this article; or

(4) That the applicant for or holder of such a license has perpetrated or committed fraud or deceit in advertising the school or in presenting to the prospective students written or oral information relating to the school, to employment opportunities, or to opportunities for enrollment in other institutions upon completion of the instruction offered in the school.

(5) That the applicant or licensee has pleaded guilty, entered a plea of nolo contendere or has been found guilty of a crime involving moral turpitude by a judge or jury in any state or federal court.

(6) That the applicant or licensee has failed to provide or maintain premises, equipment or conditions which are adequate, safe and sanitary, in accordance with such standards of the State of North Carolina or any of its political subdivisions, as are applicable to such premises and equipment.

(7) That the licensee is employing teachers, supervisors or administrators who have not been approved by the Board.

(8) That the licensee has failed to provide and maintain adequate premises, equipment, materials or supplies, or has exceeded the maximum enrollment for which the school or class was licensed.

(9) That the licensee has failed to provide and maintain adequate standards of instruction or an adequate and qualified administrative, supervisory or teaching staff. (1961, c. 1175, s. 7.)

§ **115-252. Private schools advisory committee; appointment; duties.**—(a) In the administration of this article, the Superintendent of Public Instruction shall appoint an advisory committee composed of not less than five members who shall serve at his will and pleasure and who are fairly representative of the types of private schools or educational institutions operated, conducted and maintained within this State, whose duties shall be to advise the Superintendent of Public Instruction regarding the criteria to be used in formulating standards and the rules and regulations thereunder to be prescribed for the administration of this article and the management and operation of the schools subject to the provisions hereof including the development of programs of instruction to be pursued in each type of institution subject to this article.

(b) The terms of the members shall be set by the Superintendent of Public Instruction. (1961, c. 1175, s. 8.)

§ **115-253. Execution of bond required; filing and recording; actions upon bond.**—(a) Before the State Board of Education shall issue such license the person, partnership, association of persons, or corporation shall execute a bond in the sum of one thousand dollars ($1,000.00), signed by a solvent guaranty company authorized to do business in the State of North Carolina, or by two solvent individual sureties, payable to the State of North Carolina, and approved as to solvency by the clerk of the superior court of the county in which such school or branch school will be located and conduct its business, conditioned that the principal in said bond will carry out and comply with each and every contract, made and entered into by said school or branch school, acting by and through it officers and agents with any student who desires to enter such school or branch school and to take any courses offered therein and will pay back to such student all amounts collected in tuition and fees in case of failure on the part of the parties obtaining a license from the State Board of Education to open and conduct a business school, trade school or a correspondence school, to comply with its contracts to give the instructions contracted for, and for full period evidenced by such contract. Such bond shall be filed with the clerk of the superior court of the county in which the school or branch school executing the bond is located, and shall be recorded by such clerk in a book provided for that purpose.

(b) The requirement herein specified for giving the aforesaid bond of one thousand dollars ($1,000.00) shall apply to all business, trade or correspondence schools, or any branches thereof operating in North Carolina, and the State Board of Education shall not issue any license to any person, firm or corporation to operate any of the aforesaid schools until said bond has been given and notice of the approval of same by the clerk of the superior court has been filed with said Board of Education. Operators' bonds of one thousand dollars ($1,000.00) each shall be required for each branch of such business, trade, correspondence schools, or any branch thereof operated within the State by any person, partnership or corporation.

(c) In any and all cases where the party receiving the license from the State Board of Education fails to comply with any contract made and entered into with any student, or with the parents or guardian of said student, then the State of North Carolina upon the relation of said student, parent or guardian entering into the contract shall have a cause of action against the principal and sureties on the bonds herein provided for the full amount of payments made to such person, with six percent (6%) interest from the date of payment of said amount.

For a violation of its contract with a student, or for other good cause, the State Board of Education is authorized to revoke the license issued to the offending school. (1955, c. 1372, art. 30, s. 5; 1957, c. 1000; 1961, c. 1175, s. 9.)

§ 115-254. Operating school without license or bond made misdemeanor. — Any person, or each member of any association of persons, or each officer of any corporation who opens and conducts a business school, a trade school or a correspondence school, or branch school, as defined in this article without first having obtained the license herein required, and without first having executed the bond required shall be guilty of a misdemeanor and be punishable by a fine of not less than one hundred dollars ($100.00), nor more than five hundred dollars ($500.00) or thirty days' imprisonment, or both, at the discretion of the court, and each day said school continues to be open and operated shall constitute a separate offense. (1955, c. 1372, art. 30, s. 7; 1957, c. 1000; 1961, c. 1175, s. 10.)

§ 115-254.1. Contracts with unlicensed schools and evidences of indebtedness made null and void. — All contracts entered into by business, trade or correspondence schools, or branch school, as defined in this article, with students or prospective students, and all promissory notes, or other evidence of indebtedness taken in lieu of cash payments by such schools shall be null and void unless such schools are duly licensed as required by this article. (1957, c. 1000; 1961, c. 1175, s. 11.)

ARTICLE 32.

Nonpublic Schools.

§ 115-255. Responsibility of State Board of Education to supervise nonpublic schools; notice of intention to operate new school.—The State Board of Education, while providing a general and uniform system of education in the public schools of the State, shall always protect the right of every parent to have his children attend a nonpublic school by regulating and supervising all nonpublic schools serving children of secondary school age, or younger, to the end that all children shall become citizens who possess certain basic competencies necessary to properly discharge the responsibilities of American citizenship. The Board shall not, in its regulation of such nonpublic schools, interfere with any religious instruction which may be given in any private, denominational, or parochial school, but such nonpublic school shall meet the State minimum standards as prescribed in the course of study, and the children therein shall be taught the branches of education which are taught to the children of corresponding age and grade in the public schools and such instruction, except courses in foreign languages, shall be given in the English language.

New nonpublic schools shall file a notice of intention to operate a new school with the State Superintendent of Public Instruction prior to beginning of operation. (1955, c. 1372, art. 31, s. 1; 1965, c. 584, s. 20.)

Editor's Note. — The 1965 amendment added the second paragraph.

§ 115-256. Teachers must have certificates for grades they teach; instruction given must substantially equal that given in public schools.—All nonpublic schools in the State and all teachers employed or who give instruction therein, shall be subject to and governed by the provisions of law for the operation of the public schools insofar as they apply to the qualifications and certification of teachers and the promotion of pupils; and the instruction given in such schools shall be graded in the same way and shall have courses of study for each grade conducted therein substantially the same as those given in the public schools where children would attend in the absence of such nonpublic school.

No person shall be employed to teach in a nonpublic school who has not obtained a teacher's certificate entitling such teacher corresponding courses or classes in public schools. (1955, c. 1372, art. 31, s. 2.)

§ **115-257. Operators must report certain information.**—The supervisory officer or teacher of all nonpublic schools shall report to the superintendent of the administrative unit in which such school is located within two weeks of the opening of such school, and within two weeks of the enrollment therein, the names of all pupils attending, their ages, parents' or guardians' names, and places of residence. Likewise, such officer or teacher shall report to such superintendent the withdrawal of any pupil within two weeks of such withdrawal. The supervisory officer or teacher of nonpublic schools shall make such reports as may be required of him by the State Board of Education, or such additional reports as are requested by the superintendent of the administrative unit in which such school is located; and he shall furnish to any court from time to time any information and reports requested by any judge thereof relating to the attendance, conduct and standing of any pupil enrolled in such school if said pupil is at the time awaiting examination or trial by the court or is under the supervision of the court. (1955, c. 1372, art. 31, s. 3.)

Article 33.

State Board of Education to License Certain Institutions and Regulate Degrees.

§§ **115-258 to 115-260:** Repealed by Session Laws 1963, c. 448, s. 27.

Article 34.

Local Option.

§ **115-261. Statement of legislative policy and purposes.**—The General Assembly of North Carolina recognizes and hereby affirms that knowledge, morality, and adherence to fundamental principles of individual freedom and responsibility are necessary to good government and the happiness of mankind; and further affirms that schools and the means of education ought forever to be encouraged. The value and importance of our public schools are known and acknowledged by all our people. It is further recognized that our public schools are so intimately related to the customs and feelings of the people of each community that their effective operation is impossible except in conformity with community attitudes. Our people in each community need to have a full and meaningful choice as to whether a public school, which may have some enforced mixing of the races, shall continue to be maintained and supported in that community. It is the purpose of this article to provide orderly procedures, consistent with law, for the effective expression of such choice. In so doing, it is the hope of the General Assembly of North Carolina that all peoples within our State shall respect deeply-felt convictions, and that our public school system shall be continually strengthened, improved, and sustained by the support of all our citizens. (1956, Ex. Sess., c. 4.)

Editor's Note. — For article on North Carolina school legislation, 1956, see 35 N.C.L. Rev. 1 (1956).

§ **115-262. Definitions of words and phrases.** — The following words and phrases when used in this article shall, for the purposes of this article, have the meanings respectively prescribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) Board of Education. — The board of education for any county or city school administrative unit.

(2) Local Option Unit.—Any county or city school administrative unit, or the combination of two or more administrative units in whole or in part, or any convenient and reasonable territorial subdivision within an administrative unit which includes within its boundaries one or more public schools.

(3) Types of Public Schools.—For purposes of this article the different types of public schools are as follows:

  a. An elementary school, that is, a school which embraces part or all of the eight elementary grades, including the elementary portion of a union school.

  b. A high school, that is, a school which embraces a high school department above the elementary grades and which offers at least the minimum high school course of study prescribed by the State Board of Education, including the high school portion of a union school.

  c. A union school, that is, a school which embraces a part or all of the elementary and high school grades.

  d. A junior high school, that is, a school which embraces not more than the first year of high school with not more than the upper two elementary grades.

  e. A senior high school, that is, a school which embraces the tenth, eleventh and twelfth grades. (1956, Ex. Sess., c. 4.)

§ 115-263. Boards of education may suspend operation of schools pursuant to article; local option units.—The board of education of any administrative unit may, pursuant to the provisions of this article, suspend the operation of one or more or all of the public schools under its jurisdiction. For purposes of this article, each county and city school administrative unit as defined in G.S. 115-4 shall constitute a local option unit; provided, however, the board of education of any administrative unit may in lieu thereof, and from time to time, subdivide the administrative unit into two or more local option units; and provided further, two or more administrative units, in whole or in part, may by agreement of each respective board of education constitute a local option unit and in such case all action with respect to such local option unit shall be taken by a majority of the members of each board of education concerned. One or more public schools shall be included within the territorial boundaries of each local option unit established by the board of education; provided, that two or more types of schools may within the discretion of the board of education be included in such local option unit. (1956, Ex. Sess., c. 4.)

§ 115-264. Two or more local option units within same administrative unit.—Two or more different and distinct local option units having the same or overlapping territorial boundaries may be established within an administrative unit by the board of education of the administrative unit. A specfic public school shall be included in only one local option unit at any given time, but the elementary division of a union school or junior high school may be in one local option unit and the high school division of the same union school or junior high school may be in a different local option unit at the same time. (1956, Ex. Sess., c. 4.)

§ 115-265. Call for election on closing schools; suspension pursuant to election; right to education expense grant.—Any board of education may at any time, by resolution of a majority of the members, call for an election on the question of closing the public schools within a local option unit which is under that board's jurisdiction; provided, that an election shall be called by the board when a petition signed by at least fifteen percent (15%) of the registered voters residing within the local option unit is presented to the board requesting such an election. When a majority of the votes cast in such election are in favor of suspending the operation of the schools in such local option unit, the board of education shall suspend the operation of such public schools. Such suspension shall be accomplished in an orderly manner and the board of education shall take all steps necessary to preserve and protect school property during and after such closing. Any child living within a local option unit who could attend a public school in such local option unit except for the fact that operation of such school has been suspended under provisions of this article shall not be entitled as a matter of right to attend any other public school, but in lieu thereof shall be entitled to an education expense grant pursuant to the provisions of article 35 of this chapter. (1956, Ex. Sess., c. 4.)

§ **115-266. Call for election on reopening schools; reopening pursuant to election.**—Any board of education may at any time, by resolution of a majority of the members, call for an election on the question of reopening the public schools within a local option unit which is under that board's jurisdiction; provided, that an election shall be called by the board when a petition signed by at least fifteen percent (15%) of the registered voters residing within the local option unit is presented to the board requesting such an election. When a majority of the votes cast in such election shall be in favor of reopening the public schools in that local option unit, the board of education shall immediately proceed to take all steps necessary to accomplish such reopening at the earliest practicable date. (1956, Ex. Sess., c. 4.)

§ **115-267. Second elections within same school year.**—When, for the same school year, there has been an election on the question of suspending the operation of the public schools of a local option unit, and a petition requesting another election on the same question is presented to the board of education, the board of education is not required to call a second election on that question, but may do so in its discretion. When, for the same school year, there has been an election on the question of reopening the public schools of a local option unit, and a petition requesting another election on the same question is presented to the board of education, the board of education is not required to call a second election on that question, but may do so in its discretion. (1956, Ex. Sess., c. 4.)

§ **115-268. Copy of resolution calling for election to be furnished board of elections; notice of election.**—When by resolution of a majority of its members a board of education has called any election authorized or required by this article, a certified copy of such resolution shall thereupon be furnished to the county board of elections, or in the case of a local option unit which is located in more than one county to the board of elections of each county concerned, with each board having the authority and responsibility to call and conduct the election in its respective county. Within five (5) days after receipt of such resolution, the county board of elections shall give the first formal notice of such election. Notice of call of an election shall be given by the county board of elections at least once a week for four (4) successive weeks in some newspaper published or generally circulated in the territory, but when no newspaper is published or generally circulated in the territory so as to meet this requirement, it shall be sufficient to post notice of the election call at the courthouse of the county in which the election is to be held and at each public school involved in the election, for a period of at least thirty (30) days before the election. Notice of the election call shall contain the date on which the election is to be held, and shall contain adequate and full information as to which specific school or schools are involved in the election, as well as a clear designation of the area within which the qualified voters are entitled to vote in such election. (1956, Ex. Sess., c. 4.)

§ **115-269. Conduct of elections.**—In any election held under this article, the county board of elections shall designate the polling place or places, appoint the registrars and judges of election, canvass and determine the results of said election when the returns have been filed with them by the officers holding the election, and record such determination on their records. Except as otherwise provided in this article, such election shall be held in accordance with the laws governing general elections. (1956, Ex. Sess., c. 4.)

§ **115-270. Registration of voters for purposes of elections under article.**—A new registration of the qualified voters of the territory concerned in an election held under this article may be ordered in the discretion of the county board of elections. In addition, the county board of elections, in its discretion, may order a separate registration of the qualified voters within the territory, with separate books of registration to be established and maintained for purposes of elections under this article; and in such event, registration for any election other than one provided for in this article shall not constitute registration for an election under this article, and registration for an election under this article shall not constitute registration for any election not provided for in this article. Notice of registration for an election under this article shall be deemed to be sufficiently given by publication once in some newspaper published or generally circulated in the territory, at last twenty (20) days before the close of the registration books. The published notice of registration shall state the days on which the books will be open for registration of voters and the place or places at which the books will be open on Saturdays. Registration shall close on the second Saturday before the election, and the Saturday before the election shall be challenge day. The expense of holding and conducting any election held under this article shall be borne by the board of education of the administrative unit in which the election is held. When the results of any such election have been officially determined and recorded in the minutes of the county board of elections, the validity of such election or of the registration for such election shall not be open to question except in an action or proceeding commenced within thirty (30) days after the determination of the results of such election. (1956, Ex. Sess., c. 4.)

§ **115-271. Form of ballots; use of voting machines.**—In an election under this article on the question of suspending the operation of a public school or schools, the ballots to be used in such election shall have printed thereon the words "For suspending the operation of .... [naming the specific public schools]" and "Against suspending the operation of .... [naming the specific public schools]"; provided, however, that if the local option unit concerned shall include all the public schools within an administrative unit, the board of elections may in lieu of the wording of the ballots prescribed above have printed thereon the words "For suspending the operation of all the public schools in .... [naming the administrative unit]" and "Against suspending the operation of all the public schools in .... [naming the administrative unit]." In an election on the question of reopening a public school or schools which have previously been closed, the ballots to be used in such election shall contain the same language as indicated above, except the word "resuming" shall be used in lieu of the word "suspending." Nothing in this article shall be construed to prohibit the use of voting machines in accordance with the laws of this State. (1956, Ex. Sess., c. 4.)

§ **115-272. Continuation of contracts of principals, teachers, etc., when schools suspended.**—When the operation of any public school is suspended pursuant to this article, any principal, teacher or supervisor then under contract and affected by such suspension shall continue to receive all salaries and benefits provided under such contract for the term of the contract. When any such principal, teacher or supervisor has secured suitable and adequate employment prior to the expiration of the contract term, such contract shall thereupon be terminated and all salaries and benefits provided thereunder shall cease. The suspension of any school pursuant to this article shall not affect the current contract of the superintendent of any county or city administrative unit. (1956, Ex. Sess., c. 4.)

§ **115-273. Obligations with respect to indebtedness not affected.**—No action taken pursuant to the provisions of this article shall affect the obligation of the State or any political subdivision or agency thereof with respect to any indebtedness heretofore or hereafter created. (1956, Ex. Sess., c. 4.)

Article 35.

Education Expense Grants.

§ **115-274. Statement of legislative policy and purposes.**—The General Assembly of North Carolina recognizes and hereby affirms that knowledge, morality, and adherence to fundamental principles of individual freedom and responsibility are necessary to good government and the happiness of mankind; and further affirms that schools and the means of education ought forever to be encouraged. The value and importance of our public schools are known and acknowledged by our people. It is further recognized that our public schools are so intimately related to the customs and feelings of the people of each community that their effective operation is impossible except in conformity with community attitudes. Our people need to be assured that no child will be forced to attend a school with children of another race in order to get an education. It is the purpose of the State of North Carolina to make available, under the conditions and qualifications set out in this article, education expense grants for the private education of any child of any race residing in this State. In so doing, it is the hope of the General Assembly of North Carolina that all peoples within our State shall respect deeply-felt convictions, and that out public school system shall be continually strengthened and improved, and sustained by the support of all our citizens. (1956, Ex. Sess., c. 3.)

Editor's Note. — For article on North Carolina school legislation, 1956, see 35 N.C.L. Rev. 1 (1956).

§ **115-275. Who may apply for State grants; when available; nonsectarian school defined.**—Every child residing in this State for whom no public school is available, or who is assigned to a public school attended by a child of another race against the wishes of his parent or guardian or the person standing in loco parentis to such child, is entitled to apply for an education expense grant from State funds appropriated for that purpose. Such grants shall be available only for education in a private nonsectarian school, and in the case of a child assigned to a public school attended by a child of another race, shall, in addition, be available only when it is not reasonable and practicable to reassign such child to a public school not attended by a child of another race. For purposes of this article, a nonsectarian school is defined as a school whose operation is not controlled directly or indirectly by any church or sectarian body or by any individual or individuals acting on behalf of a church or sectarian body. (1956, Ex. Sess., c. 3.)

§ **115-276. Amount of State grants.**—It shall be the policy of the State to make an education expense grant available to each eligible child, as provided under this article, which is equal to the per-day, per-student amount of State funds expended on public schools throughout the State during the preceding school year, but in no event, shall a grant for any child exceed the amount actually expended for the private education of such child. The State Board of Education shall determine the maximum amount of the grant to be made available to each child, and in so doing, shall take into account the total expenditures for all current expenses and for debt service on State school bonds made from State funds for the preceding school year. (1956, Ex. Sess., c. 3.)

§ 115-277. Applications to local boards for grants; standard forms; signing.—Application for an education expense grant shall be made to the board of education of the administrative unit within which the child resides. Such application shall be on standard forms prescribed by the State Board of Education for that purpose and shall be signed under oath or affirmation by the parent or guardian of or the person standing in loco parentis to the child for whom application is made. (1956, Ex. Sess., c. 3.)

§ 115-278. When applications to be approved.—Application for an education expense grant shall be approved if the board of education to whom application is made finds that:

(1) The child for whom application is made resides within the administrative unit; and

(2) There is no public school available for such child, or such child is now assigned against the wishes of his parent or guardian or of the person standing in loco parentis to such child to a public school attended by a child of another race and it is not reasonable and practicable to reassign such child to a public school not attended by a child of another race; and

(3) Such child is enrolled in or has been accepted for enrollment in a private nonsectarian school, recognized and approved under article 32 of this chapter. (1956, Ex. Sess., c. 3.)

§ 115-279. Applications to state number of school days; restricted to 180 days; subsequent applications.—Each application for an education expense grant shall specify the number of school days for which the grant is requested, but in no event shall any one application be for more than one school year or the equivalent of one hundred and eighty (180) school days. If the conditions of § 115-278 continue to be met, application may be filed on behalf of a child, who has received benefits under a previous application, for another school year or part thereof. (1956, Ex. Sess., c. 3.)

§ 115-280. Notice of approval of application for State grant; commitment restricted to 180 days; continuance of payments.—Upon approving the application for an education expense grant from State funds, the board of education shall give notice in writing to the parent or guardian or person standing in loco parentis to the child concerned of an education grant commitment for a specified number of school days and for a specified amount for each school day, but no one commitment shall exceed one hundred and eighty (180) school days. So long as the requirements set out in subdivisions (1) and (3) of § 115-278 are met during the period of the education grant commitment, the board, unless requested otherwise by the parent or guardian or person standing in loco parentis, shall continue payments under such commitment notwithstanding the fact that a change of conditions since approval of the application may make it reasonable and practicable to assign such child to a public school not attended by a child of another race. (1956, Ex. Sess., c. 3.)

§ 115-281. Notice of disapproval of application; hearing; notice of disapproval after hearing; petition to superior court; notice and procedure; appeal to Supreme Court.—Upon disapproval of an application for an education expense grant, whether payable from State or local funds, the board of education shall give notice to the applicant by registered mail, and any applicant may within ten (10) days after receipt of such notice apply to such board for a hearing, and shall be given a prompt and fair hearing on the question of entitlement to an education expense grant. The board shall render prompt decision upon such hearing, and if the board shall affirm its previous action of disapproval of the application, notice shall be given to the applicant by registered mail, and any applicant aggrieved by the action of the board may within ten (10) days after receipt of such notice file a petition in the superior court of the county in which the board sits for a hearing in the matter on all questions of fact and of law. Notice of the petition shall be properly served upon the board of education. The board shall have fifteen (15) days after receipt of notice of the petition within which to prepare and furnish to the petitioner or his attorney a certified transcript of the record in the case for filing in the superior court, which record shall include a copy of the application and any official orders and rulings of the board in the case. Additional time for preparation of the record may be granted to the board, for good cause, upon motion before the clerk of the superior court. The petition in the superior court may be heard by the resident judge of the district or by the judge presiding at a term of court in that district, and such judge shall have authority to take testimony and examine into the facts of the case, and to determine all questions of fact and of law, and enter judgment thereon. From the judgment of the superior court an appeal may be taken by the petitioner or the board to the Supreme Court in the same manner as other appeals are taken from judgments of such court in civil actions. (1956, Ex. Sess., c. 3.)

§ 115-282. Checks in payment of grants; certificates by schools attended; when child deemed in attendance.—Payments of education expense grants shall be made by check upon receipt of satisfactory evidence that the child for whom payment is made actually attended a private nonsectarian school, recognized and approved under article 32 of this chapter. The school attended shall furnish, upon forms prescribed by the State Board of Education, a sworn certificate signed by the director or other appropriate official of the school, showing the number of school days actually attended by the child for whom payment is made. A child is deemed to be in attendance, within the meaning of this section, although temporarily absent due to illness or other good cause, so long as such child is enrolled in the school as a bona fide student. Checks in payment of education expense grants shall be made payable jointly to the parent or guardian of or the person standing in loco parentis to the child and the school which the child attended, and shall be mailed to the parent or guardian or person standing in loco parentis for endorsement; provided, that if the school attended shall indicate in its certificate that the tuition and expenses for such child have already been paid the check shall be made payable to the parent or guardian or person standing in loco parentis alone. (1956, Ex. Sess., c. 3.)

§ 115-283. Payment periods; standard forms for applications, commitments, certificates, etc.; general supervision and administration of funds.—Payments of education expense grants shall be made by each board of education monthly, bimonthly or quarterly in accordance with uniform regulations adopted and promulgated by the State Board of Education. The State Board of Education is authorized and directed to prescribe standard forms for application for grants, for notice of education grant commitment, for certificates of attendance, and such other forms as may be necessary or desirable in the administration of the provisions of this article. The State Board of Education shall have general supervision and administration of the funds provided by the General Assembly for education expense grants, and it is intended that such funds shall be managed and allotted by the Controller of the State Board of Education, under direction of the Board, pursuant to the relevant provisions of chapter 115 of the General Statutes governing administration of fiscal affairs of the Board. (1956, Ex. Sess., c. 3.)

§ **115-284. Payment of grants from State funds; fiscal procedures.**—Payments of individual education expense grants from State funds shall be made only by warrants drawn on the State Treasurer, signed by the chairman and the secretary of the county or city board of education. The fiscal procedures prescribed in other articles of this chapter, unless in conflict with some specific provision in this article, shall apply to the handling and management of State funds appropriated for education expense grants. (1956, Ex. Sess., c. 3.)

§ **115-285. Payments restricted to approved schools; lists; no control or supervision of schools vested in State.**—No education expense grant shall be paid for any child except for attendance at a private nonsectarian school found to be in compliance with the provisions of article 32 of this chapter. It shall be the duty of the State Board of Education to maintain a current list of all such approved schools and to furnish such information from time to time to county and city boards of education. Payment of education expense grants for or on behalf of any child attending such a school shall not vest in the State of North Carolina, the State Board of Education or any agency or political subdivision of the State any supervision or control whatever over such nonpublic schools or any responsibility whatever for their conduct and operation. (1956, Ex. Sess., c. 3.)

§ **115-286. Appropriations for local grants; maximum grant from State and local funds.**—The appropriate tax levying authorities for any administrative unit may, upon recommendation of the board of education of such unit, appropriate amounts from any local tax or nontax funds for a local education expense grant. In no event, shall the combined total of grants for any one child, from both State and local funds, exceed the amount of actual expenses incurred in the private education of such child. (1956, Ex. Sess., c. 3.)

§ **115-287. When application for local grant to be filed; eligibility for State grant prerequisite.**—Application for a local education expense grant shall be filed with the board of education of the administrative unit when local funds have been appropriated or allotted for such purpose. No child shall be entitled to a local education expense grant who is not at the same time eligible, under the provisions of this article, for a grant from State funds. (1956, Ex. Sess., c. 3.)

§ **115-288. Applications for local grants to state number of school days; restricted to 180 days; subsequent applications.**—Each application for a local education expense grant shall specify the number of school days for which the grant is requested, but in no event shall any one application be granted for more than one school year or the equivalent of one hundred and eighty (180) school days. If the child who has received benefits under a previous application continues to be otherwise eligible, an application for a local education expense grant for another school year or part thereof may be filed in his behalf. (1956, Ex. Sess., c. 3.)

§ **115-289. Checks in payment of local grants; certificates by schools attended; when child deemed in attendance.**—Payments of local education expense grants shall be made by check upon receipt of satisfactory evidence that the child for whom payment is made actually attended a private nonsectarian school recognized and approved under article 32 of this chapter. The school attended shall furnish, in such form as may be prescribed by the local board of education, a sworn certificate signed by the director or other appropriate official of the school, showing the number of school days actually attended by the child for whom payment is made. A child is deemed to be in attendance, within the meaning of this section, although temporarily absent due to illness or other good cause, so long as such child is enrolled in such school as a bona fide student. Checks in payment of local education expense grants shall be made payable jointly to the parent or guardian of or the person standing in loco parentis to the child and the school which the child attended, and shall be mailed to the parent or guardian or person standing in loco parentis for endorsement; provided, that if the school attended shall indicate in its certificate that the tuition and expenses for such child have already been paid the check shall be made payable to the parent or guardian or person standing in loco parentis alone. (1956, Ex. Sess., c. 3.)

§ **115-290. Payment periods for local grants; administration procedures.**—Payments of local education expense grants shall be made by each board of education monthly, bimonthly or quarterly in accordance with rules and regulations adopted by each local board. In administering local grant payments, each board shall, so far as practicable, follow the procedures prescribed by the State Board of Education for the payment of education expense grants from State funds. (1956, Ex. Sess., c. 3.)

§ **115-291. Procedures for management, supervision and disbursement of local funds.**—All local funds for education expense grants, from whatever source provided, shall be managed, supervised and disbursed in accordance with the procedures set out in other articles of this chapter, pertaining to administration of local school funds, except where such procedures are in conflict with some provision of this article. (1956, Ex. Sess., c. 3.)

§ **115-292. Payment of local grants restricted to approved schools.**—No local education expense grant shall be paid for or on behalf of any child except for attendance at a private nonsectarian school found to be in compliance with the provisions of article 32 of this chapter. (1956, Ex. Sess., c. 3.)

§ **115-293. Making false affidavit, etc.**—Any person who shall knowingly make any false affidavit or shall knowingly swear or affirm falsely to any matter or thing required by the terms of this article to be sworn or affirmed to shall be guilty of perjury, and upon conviction shall be punishable by a fine and imprisonment as other persons committing perjury are punishable. (1956, Ex. Sess., c. 3.)

§ **115-294. Parents, etc., accepting payments when not entitled thereto.**—It shall be unlawful for any parent or guardian or the person standing in loco parentis to a child to accept any payment authorized by this article knowing that the child for whose benefit the payment is received did not actually attend, or was not actually a bona fide student at, a private nonsectarian school during the period for which payment is received. Any person violating this section shall be guilty of a felony and upon conviction shall be punished by imprisonment in the State's prison for not more than five (5) years or by a fine of not more than five thousand dollars ($5,000.00) or by both such fine and imprisonment. (1956, Ex. Sess., c. 3.)

§ **115-295. School officials, etc., receiving payments when school not entitled thereto.**—It shall be unlawful for any official or employee of any school, acting wilfully or corruptly, to receive any payment of a grant authorized by this article, knowing that said school is not entitled to such payment. Any person violating this section shall be guilty of a felony and upon conviction shall be punished by imprisonment in the State's prison for not more than five (5) years or by a fine of not more than five thousand dollars ($5,000.00) or by both such fine and imprisonment. (1956, Ex. Sess., c. 3.)

ARTICLE 36.

Training of Mentally Retarded Children.

§ **115-296. State Superintendent of Public Instruction to organize and administer program of training; rules; eligibility for training.**—There shall be organized and administered under the general supervision of the State Superintendent of Public Instruction a program of training for the trainable mentally retarded children residing within the State. The State Superintendent of Public Instruction shall formulate reasonable rules prescribing the general or specific nature of the program and the procedures for its operation and maintenance. He shall prescribe reasonable rules for determining a child's eligibility for participation in the program on the basis of adequate individual psychological, sociological, and medical evaluations and other related factors. Residence within the school administrative unit shall not be a factor in establishing a child's eligibility to attend such a training center. (1957, c. 1369, s. 1.)

Cross Reference. — As to training of educable mentally handicapped children, see §§ 115-300 to 115-305.

§ **115-297. Local boards may establish programs or centers; joint operation; expenditure of State and local funds; gifts.**—County and city boards of education are hereby authorized and empowered to establish training programs or centers for training such trainable mentally retarded children. Boards of education in adjacent administrative units may by written agreement recorded in their minutes jointly operate such a program or center. In addition to such other funds as may be available for this purpose, county or city boards of education establishing such programs or centers are authorized to expend therefor any State or local funds apportioned to them under the provisions of this article. County and city boards may also receive gifts to be used for such programs or centers and may expend them for such purposes. County and city boards of education are authorized to include in their capital outlay and current expense budgets funds to enable the establishment, maintenance and operation of training programs or centers established pursuant to this article and the tax levying authorities are authorized to allow said budgetary items and to levy proper taxes therefor. (1957, c. 1369, s. 2.)

§ **115-298. Allocation of sufficient funds to administer program.**—From the appropriations provided for the purpose of this article, the State Board of Education shall allocate and transfer to the State Department of Public Instruction an amount sufficient to provide personnel to determine eligibility for and generally to administer and supervise the program established under the provisions of this article. (1957, c. 1369, s. 3.)

§ **115-299. Allocation of state-aid funds to local boards.** — The State Board of Education, upon the finding in any school administrative unit of need for the program together with official and public interest and evidence of a financial ability and willingness to aid in maintaining a satisfactory program, shall allocate and transfer to the county or city board of education in whose administrative unit the training center is located such state-aid funds as shall be determined under the provisions of this article and under the rules of the State Superintendent of Public Instruction to be available for the operation and maintenance of said program or center. State funds shall be allocated uniformly to boards of education on a per capita basis, not less than three hundred sixty dollars ($360.00) per fiscal year, for each eligible child enrolled in the program. (1957, c. 1369, s. 4; 1963, c. 688, s. 4.)

Editor's Note. — The 1963 amendment substituted "less than three hundred sixty dollars ($360.00)" for the words "to exceed three hundred dollars ($300.00)" in the last sentence.

ARTICLE 37.

Training of Educable Mentally Handicapped Children.

§ **115-300. Organization of program; rules and regulations; eligibility for training; information to local school units.**—There shall be organized and administered by the Superintendent of Public Instruction and the State Board of Education under the general supervision of the State Superintendent of Public Instruction a program of training for the educable mentally handicapped children residing within the State. Such program shall be a continuing program to begin at the beginning of the school year 1961-62. The State Superintendent of Public Instruction, subject to approval of the State Board of Education, shall formulate reasonable rules prescribing the program and the procedures for its operation and maintenance and shall prescribe reasonable rules for determining a child's eligibility for participation in the program on the basis of adequate individual psychological, sociological, and medical evaluations and other related factors. In order to assure maximum participation by the local school administrative units, full information on the rules and regulations and other pertinent information shall be forwarded to the local school units in time for them to meet the requirements to qualify for participation in the program. (1961, c. 1146, s. 1.)

Cross Reference. — As to training of mentally retarded children, see §§ 115-296 to 115-299.

§ **115-301. Authority of local boards to establish programs; joint operation; duty of local superintendent.**—County and city boards of education are hereby authorized to establish training programs for training the educable mentally retarded children in each administrative unit. Boards of education in more than one administrative unit may by written agreement recorded in their minutes jointly operate such a program. When directed by the board of education in the administrative unit, it shall be the duty of the superintendent of public instruction in that unit to conduct a survey of the children residing in said unit for the purpose of determining those who are educable mentally handicapped children. The superintendent shall then make a full report to the board as to his findings and shall thereafter report to the board, from time to time, any other such educable mentally handicapped children within the administrative unit when they shall come to his attention. (1961, c. 1146, s. 2.)

§ **115-302. Expenditure of State and local funds; gifts.**—In addition to such other funds as may be available for their purpose, county or city boards of education establishing such programs are authorized to expend therefor any State or local funds apportioned to them under the provisions of this article. County and city boards may also receive gifts to be used for such programs and may expend them for such purposes. County and city boards of education are authorized to include in their capital outlay and current expense budgets funds to facilitate the establishment, maintenance, and operation of training programs pursuant to this article and the tax levying authorities are authorized to allow said budgetary items and to levy proper taxes therefor. (1961, c. 1146, s. 3.)

§ **115-303. Requests for teachers and other allotments from State Board; reasons for disapproval of requests to be given; transfer of funds.**—When the county or city board of education in any administrative unit or units shall approve the establishment of a training program for educable mentally handicapped children in said unit or units, it may thereupon request from the State Board of Education allotment of teachers for the program and such other allotments as may be applicable to the program. When the program for training the educable mentally handicapped children in a unit or a combination of units meets the reasonable rules and regulations prescribed in accordance with § 115-300, the State Board of Education may provide teachers and other applicable allotments for such a program from the appropriation made to the Nine Months School Fund, notwithstanding any limitations express or implied on the amount for teachers and other allotments for this program in the Appropriations Act. Whenever a request is disapproved either for failure to qualify under the rules and regulations established under the authority of § 115-300 or because of lack of funds, the reason for such disapproval shall be given in writing by the State Superintendent of Public Instruction to the State Board of Education and to the superintendent of the unit or units which make the request and to the Advisory Budget Commission. The Director of the Budget, upon request from the State Board of Education, is authorized to make transfers to the Nine Months School Fund of any State funds which the State Board of Education may find available in any budget administered by the State Board of Education for the purpose of providing funds required for the program or programs which have been disapproved for lack of funds. (1961, c. 1146, s. 4.)

§ **115-304. Funds available for program.**—From the appropriations to the Nine Months School Fund and such other appropriations as may be available, the State Board of Education may allocate and transfer to the State Department of Public Instruction for the biennium 1961-1963 an amount which the Board deems adequate to provide personnel to administer and supervise the program established under the provisions of this article in addition to the personnel presently in the Department of Public Instruction charged with the administration of education for handicapped persons. (1961, c. 1146, s. 5.)

§ **115-305. Determination of allotments by State Board; salary schedule for teachers.**—In making allotments to the administrative units for this program, the State Board of Education is authorized to determine the allotment of teachers and other applicable allotments which are deemed adequate to support the training program in each unit or combination of units and, even though such allotments exceed the allotments which would be required for a program for normal children, may make allocations on that basis. The State Board of Education is authorized, in its discretion, to provide a separate salary schedule for teachers serving this program. (1961, c. 1146, s. 6.)

ARTICLE 38.

Education of Exceptionally Talented Children.

§ **115-306. Educational program established.**—There is hereby established a program for the education of exceptionally talented children within the public school system of North Carolina which shall be state-wide in operation and opportunity. (1961, c. 1077, s. 1.)

§ **115-307. Definitions.**—As used in this article,

(1) The term "Director" means the Director of the Division for the Education of Exceptionally Talented Children within the public school system.

(2) The term "exceptionally talented child" means a pupil in the public school system of North Carolina who possesses the following qualifications:
  a. A group intelligence quotient of 120 or higher,
  b. A majority of marks of A and B,
  c. Emotional adjustment that is average or better,
  d. Achievements at least two grades above the State norm, or in the upper 10% of local norms of the administrative unit, and

e. Shall be recommended by the pupil's teacher or principal.

The State Board is authorized to change the foregoing criteria for qualification as an exceptionally talented child, if deemed necessary, provided the qualifications shall be uniform in application.

(3) The term "State Board" means the State Board of Education.

(4) The term "State Superintendent" means the State Superintendent of Public Instruction. (1961, c. 1077, s. 2.)

§ **115-308. Division for Education of Exceptionally Talented Children created.**—There is created within the State Department of Public Instruction a division to be known as the Division for the Education of Exceptionally Talented Children. (1961, c. 1077, s. 3.)

§ **115-309. Division administered by Director; appointment and salary of Director; assistance, clerical help and travel allowances.**—The Division for the Education of Exceptionally Talented Children within the public school system shall be administered by a Director under the general supervision of the State Superintendent. The Director shall be appointed by the State Superintendent subject to the approval of the State Board. The salary of the Director shall be determined by the State Personnel Council upon recommendation of the State Board and shall be adequate to obtain a person highly trained and qualified by reason of education and experience. The State Board is authorized to provide the Director with such assistance, clerical help, and travel allowances as it may determine to be necessary to carry out the responsibilities of the office of Director under this article. (1961, c. 1077, s. 4.)

§ **115-310. Supervisor for testing and pupil classification; appointment and duties; specialists for counseling and identification of students.**—The Director shall recommend and the State Superintendent appoint, with the approval of the State Board, a supervisor for testing and pupil classification who shall, in cooperation with existing testing and pupil classification services of the Department of Public Instruction, be charged with the responsibility of testing and evaluating all children in the public school system for the purpose of identifying the exceptionally talented children. Said supervisor shall be a person well trained and professionally qualified to carry out this responsibility. In addition, the Director shall recommend and the State Superintendent appoint with the approval of the State Board, such specialists as may be necessary for adequate counseling and identification of such exceptionally talented school children throughout the State; and the State Board shall provide necessary funds for office expense and travel for the conduct of their work. (1961, c. 1077, s. 5.)

§ **115-311. District supervisors; appointment, duties and funds.**—In each of the eight educational districts into which the State is divided by the General Assembly pursuant to Article IX, § 8 of the Constitution of North Carolina, appropriate programs of education for exceptionally talented children shall be established and developed by a district supervisor of education of the exceptionally talented children in the district. The district supervisors shall be recommended by the Director and appointed by the State Superintendent with the approval of the State Board, and shall be well trained, professional personnel. The district supervisors shall be provided funds for office expense and travel allowances. Their duties shall include assistance of local administrative units in planning programs and developing curricula for the exceptionally talented pupils. (1961, c. 1077, s. 6.)

§ **115-312. Powers and duties of Director generally.**—The Director, under the direction of the State Board and in accordance with the rules and regulations prescribed by it, is authorized to perform such other powers and duties as the State Board may prescribe for the implementation of the purposes of this article, including the following:

(1) Research studies which will develop techniques, curricula, and materials especially applicable to exceptionally talented children;
(2) Recommendation of special books, materials, and other supplies to be purchased by the State Board for the proper implementation of this article, including the local programs provided in § 115-313;
(3) Direction of the district supervisors provided for in § 115-311 in the development of proper curricula and studies to fit the individual needs of exceptionally talented children within the district of the supervisor and of the local administrative units within such districts; and
(4) Establishment of standards for the teachers of the exceptionally talented to be employed or paid in whole or in part pursuant to the provisions of this article and to give such examinations or tests as may be necessary to determine such qualifications. (1961, c. 1077, s. 7.)

§ **115-313. Local programs; submission for approval; allotment of funds; teachers; joint programs.**—The superintendent of any school administrative unit may submit to the Director a proposal, including any program already in operation, for a local program for the education of the exceptionally talented children in that administrative unit. If such proposal is approved by the Director, in accordance with rules and regulations to be prescribed by the State Board, for qualification of local programs under this article, there shall be allocated by the State Board out of the Nine Months School Fund, to the school administrative unit such funds as may be necessary to carry out the program. Such programs may include additional teachers, special materials and books, plans for identifying and guiding exceptionally talented students, or other items of excess cost not properly borne by the local unit, provided that the amount allocated shall not exceed a maximum amount for each participant pupil to be fixed by the State Board. Teachers for such approved local programs may be allotted out of the teachers provided for the Nine Months School Fund, provided such allotment may be in addition to the regular teacher allotment to the administrative unit involved. Two or more administrative units may join together for the purpose of operating such a program, under the direction of the Division for the Education of Exceptionally Talented Children. (1961, c. 1077, s. 8.)

§ **115-314. Programs in pilot centers.**—Demonstrative programs for the education of exceptionally talented children in five pilot centers throughout the State shall be continued under the supervision of the Director for the school year 1961-1962, the excess expense of such pilot centers over and above local expenditure to be borne by the State out of the appropriation provided in this article. The Director shall recommend rules and regulations subject to approval of the State Board, for the reimbursement of such excess expense. Subsequent to the school year 1961-1962, the Director shall, with the approval of the State Board, determine whether pilot centers shall continue to be operated, and if so, the number, location, and manner of operation thereof; provided that these pilot centers shall be representative of the various conditions and geographic areas throughout the State. (1961, c. 1077, s. 9.)

Editor's Note. — The appropriation referred to in this section appears in s. 10 of c. 1077, Session Laws 1961, from which this article derives.

§ **115-315. Programs financed out of local funds not affected.**—Nothing in this article shall prohibit or interfere with the operation in a local school administrative unit of any program for exceptionally talented children not qualifying for the State funds provided in § 115-313, but which is financed out of local funds. (1961, c. 1077, s. 11.)

Article 39.

Voluntary Endowment Funds for Public Schools.

§ 115-316. Creation of endowment funds; administration.—Any county or city board of education is hereby authorized and empowered upon the passage of a resolution to create and establish a permanent endowment fund which shall be financed by gifts, donations, bequests or other forms of voluntary contributions. Any endowment fund established under the provisions of this article shall be administered by the members of such board of education who, ex officio, shall constitute and be known as "The Board of Trustees of the Endowment Fund of the Public Schools of .... County or .... City or Town" (in which shall be inserted the name of the county, city or town). The board of trustees so established shall determine its own organization and methods of procedure. (1961, c. 970.)

§ 115-317. Boards of trustees public corporations; powers and authority generally; investments.—Any board of trustees created and organized under this article shall be a body politic, public corporation and instrumentality of government and as such may sue and be sued in matters relating to the endowment fund and shall have the power and authority to acquire, hold, purchase and invest in all forms of property, both real and personal, including, but not by way of limitation, all types of stocks, bonds, securities, mortgages and all types, kinds and subjects of investments of any nature and description. The board of trustees of said endowment fund may receive pledges, gifts, donations, devises and bequests, and may in its discretion retain such in the form in which they are made, and may use the same as a permanent endowment fund. The board of trustees of any endowment fund created hereunder shall have the power to sell any property, real, personal or choses in action, of the endowment fund, at either public or private sale. The board of trustees shall be responsible for the prudent investment of any funds or moneys belonging to the endowment fund in the exercise of its sound discretion without regard to any statute or rule of law relating to the investment of funds by fiduciaries. (1961, c. 970.)

§ 115-318. Expenditure of funds; pledges.—It is not the intent that such endowment fund created hereunder shall take the place of State appropriations or any regular appropriations, tax funds or other funds made available by counties, cities, towns or school administrative units for the normal operation of the public schools. Any endowment fund created hereunder, or the income from same, shall be used for the benefit of the public schools of the county, city or town involved and to supplement regular and normal appropriations to the end that the public schools may improve and increase their functions, may enlarge their areas of service and may become more useful to a greater number of people. The board of trustees in its discretion shall determine the objects and purposes for which the endowment fund shall be spent. Nothing herein shall be construed to prevent the board of trustees of any such endowment fund established hereunder from receiving pledges, gifts, donations, devises and bequests and from using the same for such lawful school purposes as the donor or donors designate, provided, always, that the administration of any such pledges, gifts, donations, devises and bequests, or the expenditure of funds from same, will not impose any financial burden or obligation on the State of North Carolina or any subdivisions of government of the State. The board of trustees may with the consent of the donor of any pledges, transfer and assign such pledges as security for loans. This consent by the donor may be made at the time of the pledge or at any time before said pledges are paid off in full. It is the purpose of this provision to enable the board of trustees to have the immediate use of funds which the donor may desire to pledge as payable over a period of years. (1961, c. 970.)

§ **115-319. When only income from fund expended.**—Where the donor or donors of said pledges, gifts, donations, devises and bequests so provides, the board of trustees shall keep the principal of such gift or gifts intact and only the income therefrom may be expended. (1961, c. 970.)

§ **115-320. Property and income of board of trustees exempt from State taxation.**—All property received, purchased, contributed or donated to the board of trustees for the benefit of any endowment fund created hereunder and all donations, gifts and bequests received or otherwise administered for the benefit of said endowment fund, as well as the principal and income from said endowment fund, shall at all times be free from taxation, of any nature whatsoever, within the State. (1961, c. 970.)

SUBCHAPTER XI. SPECIAL EDUCATIONAL INSTITUTIONS.

Article 40.

State School for the Blind.

§ **115-321. Incorporation, name and management.**—The institution for the education of the deaf and dumb and the blind, located in the city of Raleigh, shall be a corporation under the name and style of the State School for the Blind and the Deaf, and shall be under the management of a board of directors and superintendent: Provided that the board of directors and the superintendent of said institution are hereby authorized to change the name of said institution from the "State School for the Blind and the Deaf" to some other name that will completely eliminate the words "blind" and "deaf" from the name of said institution. (1881, c. 211, s. 1; Code, s. 2227; Rev., s. 4187; 1917, c. 35, s. 1; C. S., s. 5872; 1957, c. 1434; 1963, c. 448, s. 28.)

Editor's Note. — This article formerly appeared as §§ 116-105 to 116-119. It was transferred to its present location by Session Laws 1963, c. 448, s. 28.

Cited in Hass v. Hass, 195 N.C. 734, 143 S.E. 541 (1928).

§ **115-322. Directors; appointment; terms; vacancies.**—There shall be eleven (11) directors of the School for the Blind and Deaf at Raleigh, to be appointed by the Governor. Within thirty days from March 10, 1925, the Governor shall appoint six (6) directors and within six months from March 10, 1925, the Governor shall appoint five (5) directors. At the time of making the appointment the Governor shall designate which of the present members of the board are to be succeeded by his nominees and appointees. The terms of the directors shall be four years from their appointment and until their successors are appointed and qualified. The Governor shall fill all vacancies. The Governor shall transmit to the Senate at the next session of the General Assembly the names of his appointees for confirmation. The Governor shall have the power to remove any member of any of the board of directors whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. (Code, s. 2228; 1899, cc. 311, 540; 1901, c. 707; 1905, c. 67; Rev., s. 4188; C. S., s. 5873; 1925, c. 306, ss. 10, 13, 14; 1963, c. 448, s. 28.)

§ **115-323. President, executive committee, and other officials; election, terms, and salaries.**—The board of directors shall organize by electing one of its number president and three an executive committee. The terms of office in each case shall be for two years. The board shall elect a superintendent, who shall be ex officio secretary of the board, and whose term of office shall be for three years; also a steward and a physician whose terms of office shall be for two years; and such officers, agents, and teachers as shall be deemed necessary.

The compensation for officers and agents and teachers, mentioned in this section, shall be fixed by the board, and shall not be increased nor reduced during their term of service. The board shall have power to erect any buildings necessary, make improvements, and in general do all matters and things which may be beneficial to the good government of the institution, and to this end may make bylaws for the government of the same. The board of directors may term the head teacher of the white department "principal," and the chief officer of the colored department "principal of the colored department." (1881, c. 211, s. 3; Code, § 2229; Rev., s. 4189; 1917, c. 35, ss. 1, 2; C. S., s. 5874; 1963, c. 448, s. 28.)

§ 115-324. Meetings of the board and compensation of the members.—The board shall meet at stated times and also at such other times as it may deem necessary. The members of the board shall be paid traveling expenses incurred in the discharge of their official duties, and shall also be paid the same per diem on account of attending meetings of the board as is provided for boards of other State institutions, from time to time, in the biennial appropriation acts. (1881, c. 211, s. 4; Code, s. 2230; Rev., s. 4190; C. S., s. 5875; 1943, c. 608, s. 1; 1963, c. 448, s. 28.)

§ 115-325. Admission of pupils; how admission obtained.—The board of directors shall, on application receive in the institution for the purpose of education, in the main department, all white blind children, and in the department for colored all colored deaf-mutes and blind children, residents of this State, not of confirmed immoral character, nor imbecile, nor unsound in mind, nor incapacitated by physical infirmity for useful instruction, who are between the ages of seven and twenty-one years: Provided, that pupils may be admitted to said institution who are not within the age limits above set forth, in cases in which the board of directors find that the admission of such pupils will be beneficial to them and in cases in which there is sufficient space available for their admission in said institution: Provided, further, that the board of directors is authorized to make expenditures, out of any scholarship funds or other funds already available or appropriated, of sums of money for the use of out of State facilities for any student who, because of peculiar conditions of race or disability, cannot be properly educated at the School in Raleigh. (1881, c. 211, s. 5; Code, s. 2231; Rev., s. 4191; 1917, c. 35, s. 1; C. S., s. 5876; 1947, c. 375; 1949, c. 507; 1953, c. 675, s. 14; 1963, c. 448, s. 28.)

§ 115-326. Admission of curable blind.—The directors of the institution for the blind, in the city of Raleigh, shall set apart space in said institution for the use of the curable blind who, by reason of poverty, are unable to pay for treatment. It shall be the duty of the directors of the institution for the blind in Raleigh to admit into such institution from time to time, such of the blind of the State as they may deem to be curable. (1895, c. 461; Rev., s. 4192; C. S., s. 5877; 1963, c. 448, s. 28.)

§ 115-327. Admission of pupils from other states.—The board may, on such terms as they deem proper, admit as pupils persons of like infirmity from any other state: Provided, such power shall not be exercised to the exclusion of any child of this State, and the person so admitted shall not acquire the condition of a resident of the State by virtue of such pupilage. (1881, c. 211, s. 6; Code, s. 2232; Rev., s. 4193; C. S., s. 5878; 1963, c. 448, s. 28.)

§ 115-328. Board may confer degrees.—The board may, upon the recommendation of the superintendent and faculty, confer such degree or marks of literary distinction as may be thought best to encourage merit. (1881, c. 211, s. 7; Code, s. 2233; Rev., s. 4194; 1917, c. 35, s. 1; C. S., s. 5879; 1963, c. 448, s. 28.)

§ **115-329. Election of officers.**—The board of directors shall, on the second Monday in May, one thousand nine hundred and five, and every three years thereafter, elect an officer to be styled superintendent. They may elect all officers and teachers at the same time. The terms of office of the superintendent and the steward shall begin June 1st, and the terms of all other officers and teachers shall begin September first, and for the periods named in this article. The superintendent shall be a man of good moral character, and shall have such experience and training as in the opinion of the board of directors shall qualify such person for this position. He shall have charge of the institution in all its departments, and shall do and perform such duties and exercise such supervision as is incumbent upon such officer. (1881, c. 211, s. 8; Code, s. 2234; 1889, c. 539; 1893, c. 137; 1901, c. 707, s. 2; Rev., s. 4195; 1917, c. 35, s. 1; C. S., s. 5880; 1943, c. 425; 1963, c. 448, s. 28.)

§ **115-330. State Treasurer is ex officio treasurer of institution.**—The State Treasurer shall be ex officio treasurer of the institution. He shall report to the board at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. (1881, c. 211, s. 9; Code, s. 2235; Rev., s. 4196; C. S., s. 5881; 1963, c. 448, s. 28.)

§ **115-331. Reports of board to Governor.**—The board shall make a report to the Governor on the first of January next before the regular meeting of the General Assembly, showing the condition of the institution in its various departments, and shall give any information the Governor shall desire from time to time. (1881, c. 211, s. 9; Code, s. 2235; Rev., s. 4196; C. S., s. 5882; 1963, c. 448, s. 28.)

§ **115-332. Removal of officers.**—The board shall have power to remove any officer, employee, or teacher for gross immorality, wilful neglect of duty, or any good and sufficient cause; but in any such case notice in writing of the charges shall be served on the accused, proved, and entered on record. The board shall fill all vacancies which may occur from any cause. (1881, c. 211, s. 10; Code, s. 2236; Rev., s. 4197; C. S., s. 5883; 1963, c. 448, s. 28.)

§ **115-333. Employees.**—The superintendent, subject to the control of the board, shall have power to employ all employees and fix their compensation, and to discharge them at pleasure. (1881, c. 211, s. 11; Code, s. 2237; Rev., s. 4198; 1917, c. 35, s. 1; C. S., s. 5884; 1963, c. 448, s. 28.)

§ **115-334. When clothing, etc., for pupils paid for by county.**—Where it shall appear to the satisfaction of the director of public welfare and the chairman of the board of county commissioners that the parents of any deaf or blind child of the county are then unable to provide such child with clothing and/or traveling expenses to and from the State School for the Blind and the Deaf, and the North Carolina School for the Deaf, or where such child has no living parent, or any estate of its own, or any person, or persons, upon which it is legally dependent who are able to provide expenses provided for herein, then upon the demand of the institution which such child attends or has been accepted for attendance, said demand being made through the State Auditor, the board of county commissioners of the county in which such child resides shall issue or cause to be issued, its warrant payable to the State Auditor, same to be credited to the proper institution, for the payment of an amount sufficient to clothe and pay traveling expenses of said child; provided, that the amount, in no case, shall exceed forty-five dollars ($45.00) per annum for each child, in addition to such amounts as may be necessary to defray the actual traveling expenses to and from said institution. For such amount so furnished, the parents, or other person upon whom such child is, or may be, legally dependent, and such child, shall be and remain liable for the payment thereof, together with 5% per annum interest thereon from the date of each payment by the county. At any time after any of such payments, in the discretion of the board of commissioners, or any succeeding board, a suit may be instituted in some court of competent jurisdiction in said county, or in any other county in the State according to the venue now or hereafter fixed by law for the recovery of the same, which suit shall be prosecuted by the person who may now or hereafter perform the duties of county attorney, and the parents of such child shall be liable therefor jointly and severally, and all other persons who are made liable therefor herein shall be liable severally for such amounts and interest and the cost of suit. (1879, c. 332, s. 1; Code, s. 2238; Rev., s. 4199; Ex. Sess. 1908, c. 69; 1917, c. 35, s. 3; 1919, c. 183; C. S., s. 5885; 1927, c. 86; 1929, c. 181; 1961, c. 186; 1963, c. 448, s. 28.)

§ **115-335. Title to farm vested in directors.**—The farm of one hundred acres, now held by the said School, west of the city of Raleigh, shall be held in fee simple by the board of directors of said institution, to be improved, or used, or disposed of, or exchanged for lands more convenient, as the best interests of the said institution, in its judgment, may require or demand. (1901, c. 707, s. 3; Rev., s. 4201; C. S., s. 5886; 1963, c. 448, s. 28.)

Article 41.

State Schools for the Deaf.

§ **115-336. Incorporation, name and location.**—There shall be maintained a school for the white deaf children of the State which shall be a corporation under the corporate name of the North Carolina School for the Deaf, to be located upon the grounds donated for that purpose near the town of Morganton. The North Carolina School for the Deaf shall be classed and defined as an educational institution: Provided that the board of directors and the superintendent of said institution are hereby authorized to change the name of said institution to some other name that will completely eliminate the word "deaf" from the name of said institution. (1891, c. 399, s. 1; Rev., s. 4202; 1915, c. 14; C. S., s. 5888; 1957, c. 1433; 1963, c. 448, s. 28.)

Editor's Note. — This section formerly appeared as § 116-120. It was transferred to its present location by Session Laws 1963, c. 448, s. 28.

§ **115-337. Incorporation and location of Eastern North Carolina School for the Deaf.**—There is hereby established and there shall be maintained a school for the deaf of this State which shall be a corporation under the corporate name of the Eastern North Carolina School for the Deaf.

As soon as practicable after its appointment as hereinafter provided for the North Carolina Directors of Schools for the Deaf shall meet with the Governor and consider sites, including the proposed site at Wilson, North Carolina, together with any other sites in Eastern North Carolina which may be offered as a location for the school. From all sites offered, the Governor and the North Carolina Directors of Schools for the Deaf shall designate that site considered most suitable as the location for the Eastern North Carolina School for the Deaf, and such school shall thereafter be known as the "North Carolina School for the Deaf at ...." (1961, c. 968; 1963, c. 448, s. 28.)

Editor's Note. — This section formerly appeared as § 116-125.1. It was transferred to its present location by Session Laws 1963, c. 448, s. 28.

§ **115-338. Control and management by board of directors; composition; appointment, term and removal of members; vacancies.**—The North Carolina School for the Deaf at Morganton and the Eastern North Carolina School for the Deaf shall be under the control and management of a board of directors consisting of eleven (11) members known as the North Carolina Directors of Schools for the Deaf. The said board of directors, to be known as North Carolina Directors of Schools for the Deaf, shall be constituted and composed as follows: The Governor of North Carolina, within thirty days after June 17, 1961, shall appoint eleven (11) members or directors for terms of four (4) years each from and after the date of their appointment, and these eleven (11) members shall constitute the North Carolina Directors of Schools for the Deaf. All directors appointed as herein provided shall hold office until their successors are appointed and qualified. The Governor of North Carolina shall fill all vacancies in office of said directors arising because of death, resignation or any reason whatsoever. As soon as the Governor of North Carolina has appointed all directors, as herein provided, to serve as North Carolina Directors of Schools for the Deaf, the Board of Directors of the North Carolina School for the Deaf at Morganton shall cease to exist and the general control, administration and supervision of the Eastern North Carolina School for the Deaf and the North Carolina School for the Deaf at Morganton shall be under the authority of the North Carolina Directors of Schools for the Deaf as herein constituted. The Governor shall transmit to the General Assembly at its next regular session the names of his appointees for confirmation but the appointees of the Governor shall have the right to serve and act as said directors until their names are presented to the General Assembly for confirmation. The Governor shall have the power to remove any member of the board of directors whenever in his opinion it is to the best interest of the State to remove such person, and the Governor shall not be required to give any reason for such removal. (1961, c. 968; 1963, c. 448, s. 28.)

Editor's Note. — This section formerly appeared as § 116-125.2. It was transferred to its present location by Session Laws 1963, c. 448, s. 28.

§ **115-339. Organization of board; election and salaries of superintendents, officers, teachers and agents; application of State Personnel Act.**—The board of directors shall organize by appointing one of its number president and three an executive committee, who shall hold office for two years; they shall elect a superintendent for each school whose terms of office shall be three years, and such other officers, teachers, and agents as shall be deemed necessary, and shall fix the compensation of same. Notwithstanding any other provisions of this article, the personnel of the Eastern North Carolina School for the Deaf and the North Carolina School for the Deaf at Morganton shall be subject to all of the provisions of the State Personnel Act, the same being article 2 of chapter 143 of the General Statutes. (1961, c. 968; 1963, c. 448, s. 28; c. 1011.)

Editor's Note. — This section formerly appeared as § 116-125.3. It was transferred to its present location by Session Laws 1963, c. 448, s. 28.

Session Laws 1963, c. 1011, added the second sentence.

§ **115-340. Qualifications of superintendents; powers and duties generally.**—The superintendents shall be teachers of knowledge, skill, and ability in their profession and experience in the management and instruction of the deaf. They shall possess good executive ability and shall be the chief executive officers of the institutions. They shall devote their whole time to the supervision of the institution, and shall see that the pupils are properly instructed in the branches of learning and industrial pursuits as provided for in this article, and under the supervision of the board. The board shall elect all teachers and subordinate officers by and with the consent and recommendation of the superintendents. (1961, c. 968; 1963, c. 448, s. 28.)

Editor's Note. — This section formerly appeared as § 116-125.3. It was transferred to its present location by Session Laws 1963, c. 448, s. 28.

§ **115-341. Pupils admitted; education.**—The board of directors shall, according to such reasonable regulations as it may prescribe, on application, receive into the school for the purposes of education all white deaf children resident of the State not of confirmed immoral character, nor imbecile or unsound in mind or incapacitated by physical infirmity for useful instruction, who are between the ages of six and twenty-one years: Provided, that the board of directors may audit students under the age of six years when, in its judgment, such admission will be for the best interest of the applicant and the facilities of the school permit such admission. Only those who are bona fide citizens and/or residents of North Carolina shall be eligible to and entitled to receive free tuition and maintenance. The board of directors may fix charges and prescribe rules whereby nonresident deaf children may be admitted, but in no event shall the admission of nonresidents in any way prevent the attendance of any eligible deaf child, resident of North Carolina. The board shall provide for the instruction of all pupils in the branches of study now prescribed by law for the public schools of the State and in such other branches as may be of special benefit to the deaf. As soon as practicable, the boys shall be instructed and trained in such mechanical pursuits as may be suited to them, and in practical agriculture and subjects relating thereto; and the girls shall be instructed in sewing, housekeeping, and such arts and industrial branches as may be useful to them in making themselves self-supporting. (1961, c. 968; 1963, c. 448, s. 28.)

Editor's Note. — This section formerly appeared as § 116-125.5. It was transferred to its present location by Session Laws 1963, c. 448, s. 28.

§ 115-342. Free textbooks and State purchase and rental system.—The North Carolina School for the Deaf, at Morganton, North Carolina, shall have the right and privilege of participating in the distribution of free textbooks and in the purchase and rental system operated by the State of North Carolina in the same manner as any other public school in said State. (1943, c. 205; 1963, c. 448, s. 28.)

Editor's Note. — This section formerly appeared as § 116-124.1. It was transferred to its present location by Session Laws 1963, c. 448, s. 28.

§ 115-343. Powers of board.—The board shall have power to make such bylaws, rules, and regulations, not inconsistent with the laws of the State, as may be necessary for the proper management of said school and its officers; and shall conduct the school in such way, as far as practicable, as to make it self-sustaining. The board is further authorized to make such arrangements with the board of directors of Broughton Hospital as may be agreed upon to promote convenience and economy for joint water supply and lighting arrangements. (1891, c. 399, ss. 8, 9, 10; Rev., s. 4205; C. S., s. 5893; 1963, c. 448, s. 28.)

Editor's Note. — This section formerly appeared as § 116-125. It was transferred to its present location by Session Laws 1963, c. 448, s. 28.

By virtue of Session Laws 1959, c. 1028, s. 3, "Broughton Hospital" has been substituted for "the State Hospital at Morganton."

ARTICLE 42.

Central Orphanage of North Carolina.

§ 115-344. Creation; powers.—The corporation created by chapter forty-seven, Private Laws of one thousand eight hundred and eighty-seven, is hereby continued as a body corporate for a period of sixty years from March 8, 1927, under the name and style of "The Central Orphanage of North Carolina." The said corporation shall have power to receive, purchase, and hold property, real and personal, not to exceed in value one million dollars, to sue and be sued, to plead and be impleaded, to receive gifts, donations and appropriations, to contract and be contracted with, and to do all other acts usual and necessary in the conduct of such corporation, and to carry out the intent and purposes thereof under and as subscribed by the laws of North Carolina. (1927, c. 162, s. 1; 1963, c. 448, s. 28; 1965, c. 617, s. 2.)

Editor's Note. — This article formerly appeared as §§ 116-138 to 116-142. It was transferred to its present location by Session Laws 1963, c. 448, s. 28.

The 1965 amendment substituted "The Central Orphanage of North Carolina" for "The Colored Orphanage of North Carolina."

§ **115-345. Directors; selection, self-perpetuation, management of corporation.**—M. F. Thornton, Reverend M. C. Ransom, J. W. Levy, J. C. Jeffreys, J. E. Shepard, N. A. Cheek, Alex Peace and Reverend G. C. Shaw are hereby named and appointed as members of the board of directors of said "The Central Orphanage of North Carolina." The Governor of North Carolina shall appoint five white citizens of Granville County as members of said board of directors, and the thirteen so named shall constitute the board of directors of said corporation. Said board of directors shall organize by the election of a president and secretary, shall make all necessary bylaws and regulations for the convenient and efficient management and control of the affairs of said corporation, including the method by which successors to the directors herein named shall be chosen. (1927, c. 162, s. 2; 1963, c. 448, s. 28; 1965, c. 617, s. 2.)

Editor's Note. — The 1965 amendment substituted "The Central Orphanage of North Carolina" for "The Colored Orphanage of North Carolina."

§ **115-346. Board of trustees; appropriations; treasurer; board of audit.**—The five members of said board of directors so appointed by the Governor shall also serve as a board of trustees of said "The Central Orphanage of North Carolina." The said board of trustees so appointed shall serve for a term of four years and until their successors are chosen. All appropriations made by the General Assembly to the said "The Central Orphanage of North Carolina" shall be under the control of the board of trustees, and said appropriations shall be expended under their supervision and direction. The board of trustees shall select one of their members as a treasurer of the fund appropriated to the institution by the General Assembly and also not more than two persons to act as a board to audit the expenditure of such appropriation. The treasurer shall receive a salary of one hundred dollars per year for his services and members of the board of audit a salary not to exceed one hundred and fifty dollars per year. The treasurer shall give a bond payable to the State of North Carolina in a surety company in such sum as the board of trustees may require, the annual premium to be paid out of the funds of the said Orphanage. (1927, c. 162, s. 3; 1963, c. 448, s. 28; 1965, c. 617, s. 2.)

Editor's Note. — The 1965 amendment substituted "The Central Orphanage of North Carolina" for "The Colored Orphanage of North Carolina."

§ **115-347. Training of orphans.**—The said corporation shall receive, train and care for such colored orphan children of the State of North Carolina as under the rules and regulations of said corporation may be deemed practical and expedient, and impart to them such mental, moral and industrial education as may fit them for usefulness in life. (1927, c. 162, s. 4; 1963, c. 448, s. 28.)

§ **115-348. Control over orphans.**—The said corporation shall have power to secure the control of such orphans by the written consent of those nearest akin to them or of those having control of such orphans, and shall receive such others as may be committed to its care under the appropriate laws of the State; and it shall be unlawful for any person or persons to interfere in any way with said corporation in the management of such orphans after they shall have been entered and received by it. The board of directors shall make all necessary rules and regulations for the reception and discharge of children from said Orphanage. (1927, c. 162, s. 5; 1963, c. 448, s. 28.)

Chapter 115A.

Community Colleges, Technical Institutes, and Industrial Education Centers.

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Article 1.

General Provisions for State Administration.

§ 115A-1. Statement of purpose.—The purposes of this chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. (1963, c. 448, s. 23.)

§ 115A-2. Definitions.—As used in this chapter:

(1) The "administrative area" of an institution comprises the county or counties directly responsible for the local financial support and local administration of such institution as provided in this chapter.

(2) The term "community college" is defined as an educational institution operating under the provisions of this chapter and dedicated primarily to the educational needs of the particular area for which established, and
  a. Which offers the freshman and sophomore courses of a college of arts and sciences,
  b. Which may offer organized curricula for the training of technicians,
  c. Which may offer vocational, trade, and technical specialty courses and programs, and
  d. Which may offer courses in general adult education.

(3) The term "industrial education center" is defined as an educational institution operating under the provisions of this chapter and dedicated primarily to the educational needs of the area for which established, and
  a. Which offers vocational, trade, and technical specialty courses and programs, and
  b. Which may offer courses in general adult education.

(4) The term "institution" refers to a community college, a technical institute, or an industrial education center.

(5) The term "State Board of Education" refers to the State Board of Education as established and described in Article IX, § 8, of the Constitution of North Carolina.

(6) The "tax levying authority" of an institution is the board of commissioners of the county or all of the boards of commissioners of the counties, jointly, which constitute the administrative area of the institution.

(7) The term "technical institute" is defined as an educational institution operating under the provisions of this chapter and dedicated primarily to the educational needs of the particular area for which established, and
  a. Which offers organized curricula for the training of technicians,
  b. Which may offer vocational, trade, and technical specialty courses and programs, and
  c. Which may offer courses in general adult education. (1963, c. 448, s. 23.)

§ 115A-3. State Board of Education to establish department to administer system of educational institutions.—The State Board of Education is authorized to establish and organize a department to provide state-level administration, under the direction of the Board, of a system of community colleges, technical institutes, and industrial education centers, separate from the free public school system of the State. The Board shall have authority to adopt and administer all policies, regulations, and standards which it may deem necessary for the establishment and operation of the department. The personnel of the department shall be governed by the same policies as the personnel of the other departments of the Board of Education and shall be subject to the provisions contained in article 2, chapter 143 of the General Statutes; except the position of the director or chief administrative officer of the department shall be exempt from the provisions of the State Personnel Act, and the compensation of this position shall be fixed by the Governor, upon the recommendation of the State Board of Education, subject to approval by the Advisory Budget Commission.

The State Board of Education shall appoint an Advisory Council consisting of at least seven members to advise the Board on matters relating to personnel, curricula, finance, articulation, and other matters concerning institutional programs and coordination with other educational institutions of the State. Two members of the Advisory Council shall be members of the North Carolina Board of Higher Education or of its professional staff, and two members of the Advisory Council shall be members of the faculties or administrative staffs of institutions of higher education in this State. (1963, c. 448, s. 23.)

§ 115A-4. Establishment and transfer of institutions.—After the effective date of this chapter, the establishment of all community colleges, technical institutes, and industrial education centers shall be subject to the prior approval of the State Board of Education and each institution shall be established only in accordance with the provisions of this chapter and the regulations, standards, and procedures adopted by the Board not inconsistent herewith. In no case, however, shall approval be granted by the Board for the establishment of an institution until it has been demonstrated to the satisfaction of the Board that a genuine educational need exists within a proposed administrative area, that existing public and private post-high-school institutions in the area will not meet the need, that adequate local financial support for the institution will be provided, that public schools in the area will not be affected adversely by the local financial support required for the institution, and that funds sufficient to provide State financial support of the institution are available.

In approving the request of the board of trustees of an industrial education center for the establishment of an educational program, it shall be a matter of general policy of the State Board of Education to require that it be demonstrated to the satisfaction of the State Board of Education that the educational and occupational needs the proposed program is designed to meet are not already met by similar educational programs maintaining standards acceptable to the State Board of Education in other public or private schools in the administrative area of the industrial education center.

In approving the request of the board of trustees of an industrial education center for the establishment of an educational program, it shall be a matter of general policy of the State Board of Education to require that it be demonstrated to the satisfaction of the State Board of Education that the industrial education center is not assuming the continuing responsibility for providing for individual manufacturing firms or corporations the routine training required for regular operator training in the factories of the firm or corporation made necessary because of turnover of personnel.

The State Board of Education and the North Carolina Board of Higher Education shall cooperate in providing for the orderly transferal of the administration and operation of College of the Albemarle, Mecklenburg College, and all other public community colleges designated by the General Assembly, from the provisions of article 3, chapter 116, of the General Statutes of North Carolina to the provisions of this chapter. Such transferal shall be accomplished as provided by this chapter and regulations and procedures adopted jointly by the two boards. The two boards shall also provide by regulation for the transfer, without consideration, of title to all property, funds, and unexpended appropriations of the colleges held heretofore by the boards of trustees of the colleges from such Boards to the respective boards of trustees established pursuant to this chapter.

Provision shall be made for the orderly transferal of the administration and operation of all industrial education centers from local boards of education of the State public school system to boards of trustees established pursuant to this chapter for the purpose of administering and operating such centers as provided in this chapter. Such transferal shall be accomplished as provided by this chapter and regulations and procedures adopted by the State Board of Education. Upon transferal of each industrial education center the local board of education previously operating the center shall transfer, without consideration, title to the property, funds, and unexpended appropriations heretofore held by such board for the center to the board of trustees established for the center pursuant to this chapter. Provided, if an industrial education center ceases to operate as an institution, as defined in this chapter, title to real property transferred to a board of trustees from the local board of education, previously operating the center, shall revert to such board of education, and said board of trustees shall thereupon, by proper instrument, convey the same to such board of education. Where plans are being made to relocate an existing industrial education center by moving it from buildings on or adjacent to a senior high school campus, the State Board of Education may designate the local board of education now operating the industrial education center as the board of trustees for the continued operation of the industrial education center until such time as the industrial education center is so relocated; and the board of trustees provided for in this chapter may be appointed to develop the new or reorganized institution but shall not have control of the existing industrial education center until it is transferred to the new site.

The approval of any new institution, or the conversion of any existing institution into a new type of institution, or the expenditures of any State funds for any capital improvements at existing institutions shall be subject to the prior approval of the Governor and the Advisory Budget Commission. The expenditure of State funds at any institution herein authorized to be approved by the Board shall be subject to the terms of the Executive Budget Act unless specifically otherwise provided in this chapter. (1963, c. 448, s. 23; 1965, c. 1028.)

Editor's Note. — The 1965 amendment added the last paragraph.

Session Laws 1963, c. 448, from which this chapter derives, became effective July 1, 1963.

§ 115A-5. Administration of institutions by State Board of Education; personnel exempt from State Personnel Act; use of existing public school facilities.—The State Board of Education may adopt and execute such policies, regulations and standards concerning the establishment and operation of institutions as the Board may deem necessary to insure the quality of educational programs, to promote the systematic meeting of educational needs of the State, and to provide for the equitable distribution of State and federal funds to the several institutions.

The State Board of Education shall establish standards and scales for salaries and allotments paid from funds administered by the Board, and all employees of the institutions shall be exempt from the provisions of the State Personnel Act. The Board shall have authority with respect to individual institutions: To approve sites, buildings, building plans, budgets; to approve the selection of the chief administrative officer; to establish and administer standards for professional personnel, curricula, admissions, and graduation; to regulate the awarding of degrees, diplomas, and certificates; to establish and regulate student tuition and fees and financial accounting procedures.

On petition of the board of education of the school administrative unit in which an institution is proposed to be established, the State Board of Education may approve the utilization by such proposed institution of existing public school facilities, if the Board finds:

(1) That an adequate portion of such facilities can be devoted to the exclusive use of the institution, and

(2) That such utilization will be consistent with sound educational considerations. (1963, c. 448, s. 23.)

§ **115A-6. Withdrawal of State support.**—The State Board of Education may withdraw or withhold State financial and administrative support of any institutions subject to the provisions of this chapter in the event that:

(1) The required local financial support of an institution is not provided;

(2) Sufficient State funds are not available;

(3) The officials of an institution refuse or are unable to maintain prescribed standards of administration or instruction; or

(4) Local educational needs for such an institution cease to exist. (1963, c. 448, s. 23.)

ARTICLE 2.

Local Administration.

§ **115A-7. Each institution to have board of trustees; selection of trustees.**—(a) Each community college and technical institute established or operated pursuant to this chapter shall be governed by a board of trustees consisting of twelve members, who shall be selected by the following agencies.

Group One—four trustees, elected by the board of education of the public school administrative unit located in the administrative area of the institution. If there are two or more public school administrative units, whether city or county units, or both, located within the administrative area, the trustees shall be elected jointly by all of the boards of education of those units, each board having one vote in the election of each trustee, except as provided in § 115A-37.

Group Two—four trustees, elected by the board of commissioners of the county in which the institution is located. Provided, however, if the administrative area of the institution is composed of two or more counties, the trustees shall be elected jointly by the boards of commissioners of all those counties, each board having one vote in the election of each trustee.

Group Three—four trustees, appointed by the Governor.

(b) Each industrial education center established or operated pursuant to this chapter shall be governed by a board of trustees consisting of eight members, four of whom shall be selected by the agencies provided for Group One in subsection (a) above and four by the agencies provided for Group Two above.

(c) All trustees shall be residents of the administrative area of the institution for which they are selected or of counties contiguous thereto.

(d) Vacancies occurring in any group for whatever reason shall be filled for the remainder of the unexpired term by the agency or agencies authorized to select trustees of that group and in the manner in which regular selections are made. Should the selection of a trustee not be made by the agency or agencies having the authority to do so within sixty (60) days after the date on which a vacancy occurs, whether by creation or expiration of a term or for any other reason, the Governor shall fill the vacancy by appointment for the remainder of the unexpired term. (1963, c. 448, s. 23.)

§ **115A-8. Term of office of trustees.**—Trustees shall serve for terms of eight (8) years, except that initially:

(1) For all industrial education centers and technical institutes and for those community colleges for which boards of trustees first shall be established pursuant to the provisions of this chapter, terms of the members of each board shall be so set by the selecting agencies that the term of a member in each group in § 115A-7 (a), shall expire on June 30 of every other year, the shortest term to expire on June 30 of the next odd-numbered year following the date the board of trustees is established. Thereafter, all terms shall be eight (8) years and shall commence on July 1.

(2) For those community colleges which hereafter shall be operated pursuant to this chapter but for which the boards of trustees have previously been appointed pursuant to the provisions of article 3, chapter 116, of the General Statutes, all trustees previously appointed and currently serving shall continue to serve until the expiration of their respective terms.

a. As the terms of the four trustees previously appointed by the city and/or county boards of education expire, their successors shall be selected by the agencies specified for Group One in § 155A-7, so that a term shall expire on June 30 of every other year, the shortest term to expire on June 30 of the next odd-numbered year following the date the successors are appointed. Thereafter, all terms shall be eight (8) years and shall commence July 1.

b. As the terms of the four trustees previously appointed by the governing board of the municipality and/or the board of commissioners expire, their successors shall be selected by the agencies specified for Group Two in § 115A-7, so that a term shall expire on June 30 of every other year, the shortest term to expire on June 30 of the next odd-numbered year following the date the successors are appointed. Thereafter, all terms shall be eight (8) years and shall commence on July 1.

c. As the terms of the four trustees previously appointed by the Governor expire, their successors shall be appointed by the Governor, so that a term shall expire on June 30 of every other year, the shortest term to expire on June 30 of the next odd-numbered year following the date the successors are appointed. Thereafter, all terms shall be eight (8) years and shall commence on July 1. (1963, c. 448, s. 23.)

§ **115A-9. Board of trustees a body corporate; corporate name and powers; title to property.**—The board of trustees of each institution shall be a body corporate with all powers usually conferred upon such bodies to enable it to acquire, hold, and transfer real and personal property, to enter into contracts, to institute and defend legal actions and suits, and to exercise such other rights and privileges as may be necessary for the management and administration of the institution and for carrying out the provisions and purposes of this chapter. The official title of each board shall be "The Trustees of ...." (filling in the name of the institution) and such title shall be the official corporate name of the institution.

The several boards of trustees shall hold title to all real and personal property donated to their respective institutions or purchased with funds provided by the tax levying authorities of their respective institutions. Title to equipment furnished by the State shall remain in the State Board of Education. In the event that an institution shall cease to operate, title to all real and personal property donated to the institution or purchased with funds provided by the tax levying authorities, except as provided for in § 115A-4, shall vest in the county in which the institution is located, unless the terms of the deed of gift in the case of donated property provides otherwise, or unless in the case of two or more counties forming a joint institution the contract provided for in § 115-37 provides otherwise. (1963, c. 448, s. 23.)

§ **115A-10. Trustees declared to be commissioners for special purpose.**—All trustees of institutions in this chapter are declared to be commissioners for special purposes within the meaning of Article XIV, § 7, of the Constitution of North Carolina. (1963, c. 448, s. 23.)

§ **115A-11. Compensation of trustees.**—Trustees shall receive no compensation for their services but shall receive reimbursement, according to regulations adopted by the State Board of Education, for cost of travel, meals, and lodging while performing their official duties. (1963, c. 448, s. 23.)

§ **115A-12. Organization of boards; meetings.**—At the first meeting after its selection, each board of trustees shall elect from its membership a chairman, who shall preside at all board meetings, and a vice-chairman, who shall preside in the absence of the chairman. The trustees shall also elect a secretary, who need not be a trustee, to keep the minutes of all board meetings. All three officers of the board shall be elected for a period of one year but shall be eligible for reelection by the board.

Each board of trustees shall meet as often as may be necessary for the conduct of the business of the institution but shall meet at least once every three (3) months. Meetings may be called by the chairman of the board or by the chief administrative officer of the institution. (1963, c. 448, s. 23.)

§ **115A-13. Removal of trustees.**—Should the State Board of Education have sufficient evidence that any member of the board of trustees of an institution is not capable of discharging, or is not discharging, the duties of his office as required by law or lawful regulation, or is guilty of immoral or disreputable conduct, the Board shall notify the chairman of such board of trustees, unless the chairman is the offending member, in which case the other members of the board shall be notified. Upon receipt of such notice there shall be a meeting of the board of trustees for the purpose of investigating the charges, at which meeting a representative of the State Board of Education may appear to present evidence of the charges. The allegedly offending member shall be given proper and adequate notice of the meeting and the findings of the other members of the board shall be recorded, along with the action taken, in the minutes of the board of trustees. If the charges are, by an affirmative vote of two thirds of the members of the board, found to be true, the board of trustees shall declare the office of the offending member to be vacant.

Nothing in this section shall be construed to limit the authority of a board of trustees to hold a hearing as provided herein upon evidence known or presented to it. (1963, c. 448, s. 23.)

§ **115A-14. Powers and duties of trustees.**—The trustees of each institution shall constitute the local administrative board of such institution, with such powers and duties as are provided in this chapter and are delegated to it by the State Board of Education. Included in the powers granted to the trustees are the following:

(1) To elect a president or chief administrative officer of the institution for such term and under such conditions as the trustees may fix, such election to be subject to the approval of the State Board of Education.

(2) To elect or employ all other personnel of the institution upon nomina-

tion by the president or chief administrative officer, subject to standards established by the State Board of Education.

(3) To purchase any land, easement, or right-of-way which shall be necessary for the proper operation of the institution, when such site has been approved by the State Board of Education, and, if necessary, to acquire land by condemnation in the same manner and under the same procedures as provided in article 2, chapter 40 of the General Statutes. For the purpose of condemnation, the determination by the trustees as to the location and amount of land to be taken and the necessity therefor shall be conclusive.

(4) To apply to the standards and requirements for admission and graduation of students and other standards established by the State Board of Education.

(5) To receive and accept private donations, gifts, bequests, and the like and to apply them or invest any of them and apply the proceeds for purposes and upon the terms which the donor may prescribe and which are consistent with the provisions of this chapter and the regulations of the State Board of Education.

(6) To provide all or part of the instructional services for the institution by contracting with other public or private educational institutions of the State, according to regulations and standards adopted by the State Board of Education.

(7) To perform such other acts and do such other things as may be necessary or proper for the exercise of the foregoing specific powers, including the adoption and enforcement of all reasonable rules, regulations, and bylaws for the government and operation of the institution under this chapter and for the discipline of students. (1963, c. 448, s. 23.)

§ **115A-15. State Retirement System for Teachers and State Employees; social security.**—Solely for the purpose of applying the provisions of chapter 135 of the General Statutes of North Carolina, "Retirement System for Teachers and State Employees, Social Security," the institutions of this chapter are included within the definition of the term "Public School," and the institutional employees are included within the definition of the term "Teacher," as these terms are defined in § 135-1. (1963, c. 448, s. 23.)

§ **115A-16. Workmen's Compensation Act applicable to institutional employees.**—The provisions of chapter 97 of the General Statutes of North Carolina, the Workmen's Compensation Act, shall apply to all institutional employees. The State Board of Education shall make the necessary arrangements to carry out those provisions of chapter 97 which are applicable to employees whose wages are paid in whole or in part from State funds. The State shall be liable for compensation, based upon the average weekly wage as defined in the Act, of an employee regardless of the portion of such wage paid from other than State funds.

The board of trustees of each institution shall be liable for workmen's compensation for employees whose salaries or wages are paid by the board entirely from local public or special funds. Each board of trustees is authorized to purchase insurance to cover such compensation liability and to include the cost of insurance in the annual budget of the institution.

The provisions of this section shall not apply to any person, firm or corporation making voluntary contributions to institutions for any purpose, and such a person, firm, or corporation shall not be liable for the payment of any sum of money under the provisions of this section. (1963, c. 448, s. 23.)

§ **115A-17. Waiver of governmental immunity from liability for negligence of agents and employees of institutions; liability insurance.**—The board of trustees of any institution, by obtaining liability insurance as provided in § 115A-35, is authorized to waive its governmental immunity from liability for the death or injury of person or for property damage caused by the negligence or tort of any agent or employee of the board of trustees when the agent or employee is acting within the scope of his authority or the course of his employment. All automobiles, buses, trucks, or other motor vehicles intended primarily for use on the public roads and highways which are the property of a board of trustees shall be insured at all times with liability insurance as provided in § 115A-35. Governmental immunity shall be deemed to have been waived by the act of obtaining liability insurance, but only to the extent that the board is indemnified for the negligence or torts of its agents and employees and only as to claims arising after the procurement of liability insurance and while such insurance is in force. (1963, c. 448, s. 23.)

§ **115A-17.1. Purchase of annuity or retirement income contracts for employees.** — Notwithstanding any provision of law relating to salaries and/or salary schedules for the pay of faculty members, administrative officers, or any other employees, of community colleges, technical institutes or industrial education centers, the board of trustees of any of the above institutions may authorize the business officer or agent of same to enter into annual contracts with any of the above officers, agents and employees which provide for a reduction in salary below the total established compensation or salary schedule for a term of one (1) year. The financial officer or agent shall use the funds derived from the reduction in the salary of the officer, agent or employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said officer, agent or employee. An officer, agent or employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the officer, agent or employee before his election for a salary reduction has become effective. The agreement for salary reductions referred to herein shall be effected under any necessary regulations and procedures adopted by the State Board of Education and on forms prepared by the State Board of Education. Notwithstanding any other provisions of this section or law, the amount by which the salary of any officer, agent or employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes. (1965, c. 366.)

Article 3.

Financial Support.

§ **115A-18. State financial support of institutions.**—(a) The State Board of Education shall be responsible for providing from sources available to the Board funds to meet the financial needs of institutions, as determined by policies and regulations of the Board, for the following budget items:

(1) Capital outlay: Furniture and equipment for administrative and instructional purposes, new library books, and other items of capital outlay approved by the Board. Provided, the State Board of Education may, on an equal matching fund basis from appropriations made by the State for the purpose, grant funds to individual community colleges and technical institutes, including those converted from industrial education centers, for the purchase, construction and remodeling of in-

stitutional buildings determined by the State Board of Education to be necessary for the instructional programs or administration of such institutions. For the purpose of determining amounts of matching State funds, local funds shall include local expenditures made prior to the enactment of this chapter or prior to an institution becoming a community college or technical institute pursuant to the provisions of this chapter, when such expenditures were made for the purchase, construction, and remodeling of institutional buildings subsequently determined by the State Board of Education to be necessary as herein specified, and provided such local expenditures have not previously been used as the basis for obtaining matching State funds under the provisions of this chapter or any other laws of the State. The State Board of Education shall not grant funds in an aggregate amount in excess of five hundred thousand dollars ($500,000) to any single institution for capital or permanent improvements, such maximum amount to include all matching State funds previously granted under the laws of this State to an institution for capital or permanent improvements.

(2) Current expenses:
  a. General administration:
    1. Salaries and travel of trustees and administrative staff.
    2. Cost of bonding institutional employees for the protection of State funds and property.
    3. Office expenses.
    4. Other costs of general administration approved by the Board.
  b. Instructional services:
    1. Salaries and travel of instructional staff and clerical employees.
    2. Instructional supplies and materials.
    3. Commencement expenses.
    4. Other costs of instructional services approved by the Board.
  c. Maintenance of plant: Maintenance and replacement of furniture and equipment furnished by the State.
  d. Fixed charges:
    1. Employer's contributions to social security and State retirement funds for the portion of institutional employees' salaries paid from State and federal funds.
    2. Cost of workmen's compensation for institutional employees paid in whole or in part from State or federal funds.
  e. Auxiliary services:
    1. Operation of libraries, including salaries and travel of staff; replacement of books; and costs of supplies, materials, periodicals, and newspapers.
    2. Other costs of auxiliary services approved by the Board.

(b) The State Board of Education is authorized to accept, receive, use, or reallocate to the institutions any federal funds or aids that have been or may be appropriated by the government of the United States for the encouragement and improvement of any phase of the programs of the institutions. (1963, c. 448, s. 23.)

§ 115A-19. Local financial support of institutions.—(a) The tax levying authority of each institution shall be responsible for providing, in accordance with the provisions of § 115A-20 or § 115A-21, as appropriate, adequate funds to meet the financial needs of the institutions for the following budget items:

(1) Capital outlay: Acquisition of land; erection of all buildings; alterations

and additions to buildings; purchase of automobiles, buses, trucks, and other motor vehicles; purchase of all equipment necessary for the maintenance of buildings and grounds and operation of plant; and purchase of all furniture and equipment not provided for administrative and instructional purposes.

(2) Current expenses:
  a. General administration:
    1. Cost of bonding institutional employees for the protection of local funds and property.
    2. Cost of auditing local funds.
    3. Cost of elections held in accordance with §§ 115A-20 and 115A-22.
    4. Legal fees incurred in connection with local administration and operation of the institution.
  b. Operation of plant:
    1. Wages of janitors, maids, and watchmen.
    2. Cost of fuel, water, power, and telephones.
    3. Cost of janitorial supplies and materials.
    4. Cost of operation of motor vehicles.
    5. Any other expenses necessary for plant operation.
  c. Maintenance of plant:
    1. Cost of maintenance and repairs of buildings and grounds.
    2. Salaries of maintenance and repair employees.
    3. Maintenance and replacement of furniture and equipment provided from local funds.
    4. Maintenance of plant heating, electrical, and plumbing equipment.
    5. Maintenance of all other equipment, including motor vehicles, provided by local funds.
    6. Any other expenses necessary for maintenance of plant.
  d. Fixed charges:
    1. Rental of land, buildings, and equipment.
    2. Cost of insurance for buildings, contents, motor vehicles, workmen's compensation for institutional employees paid from local funds, and other necessary insurance.
    3. Employer's contribution to retirement and social security funds for that portion of institutional employees' salaries paid from local funds.
    4. And any tort claims awarded against the institution due to the negligence of institutional employees.

(b) The board of trustees of each institution may apply local public funds provided in accordance with § 115A-20 (a) or § 115A-21 (a), as appropriate, or private funds, or both, to the supplementation of items of the current expense budget financed from State funds, provided a supplemental current expense budget is submitted in accordance with § 115A-27 (3). (1963, c. 448, s. 23.)

§ 115A-20. Providing local public funds for institutions established under this chapter; elections.—(a) Except as provided in § 115A-21, the tax levying authority of an institution may provide for local financial support of the institution as follows:

(1) By appropriations from nontax revenues in a manner consistent with the County Fiscal Control Act, provided the continuing authority to make such appropriations shall have been approved by a majority of the qualified voters of the administrative area who shall vote on the question in an election held for such purpose, and/or

(2) By a special annual levy of taxes within a maximum annual rate which

maximum rate shall have been approved by a majority of the qualified voters of the administrative area who shall vote on the question of establishing or increasing the maximum annual rate in an election held for such purpose; and

(3) By issuance of bonds, in the case of capital outlay funds, provided that each issuance of bonds shall be approved by a majority of the qualified voters of each county of the administrative area who shall vote on the question in an election held for that purpose. All bonds shall be subject to the Local Government Act and shall be issued pursuant to the County Finance Act. For the purpose of county debt limitations provided in that act, bonds issued for the purpose of this chapter shall be considered to be "for other than school purposes" as that term is used in §§ 153-84 and 153-87.

(b) At the election on the question of approving authority of the board of commissioners of each county in an administrative area (the tax levying authority) to appropriate funds from nontax revenues and/or a special annual levy of taxes, the ballot furnished the qualified voters in each county may be worded substantially as follows: "For the authority of the board of commissioners to appropriate funds either from nontax revenues or from a special annual levy of taxes not to exceed an annual rate of .... cents per one hundred dollars ($100.00) of assessed property valuation, or both, for the financial support of .... (name of the institution)" plus any other pertinent information and "Against the authority of the board of commissioners, etc.," with a square before each proposition, in which the voter may make a cross mark (X), but any other form of ballot containing adequate information and properly stating the question to be voted upon shall be construed as being in compliance with this section.

(c) The question of approving authority to appropriate funds and/or to levy special taxes and the question of approving an issue of bonds, when approval of each shall be necessary for the establishment or conversion of an institution, shall be submitted at the same election.

(d) All elections shall be held in the same manner as elections held under article 9, chapter 153, of the General Statutes of North Carolina, the County Finance Act, and may be held at any time fixed by the tax levying authority of the administrative area or proposed administrative area of the institution for which such election is to be held.

(e) The State Board of Education shall ascertain that authority to provide adequate funds for the establishment and operation of an institution has been approved by the voters of a proposed administrative area before granting final approval for the establishment of an institution. (1963, c. 448, s. 23.)

§ 115A-21. Providing local public funds for institutions previously established.—(a) For counties in which, immediately prior to the enactment of this chapter, there was in operation or authorized a public community college or industrial education center which hereafter shall be operated pursuant to the provisions of this chapter, the following provisions shall apply in providing local financial support for each such institution:

(1) Community colleges: The board of commissioners of a county in which is located a public community college heretofore operated or authorized to operate pursuant to article 3, chapter 116, of the General Statutes of North Carolina, may continue to levy special taxes annually for the local financial support of the college provided in § 115A-19, to the maximum rate last approved by the voters of the county in accordance with the above article. The board of commissioners may also provide all or part of such funds by appropriations, in a manner consistent with the County Fiscal Control Act, from nontax revenues. The question of increasing the maximum annual rate of a special tax

may be submitted at an election held in accordance with the provisions of § 115A-20 (d) and the appropriate provisions of § 115A-22.

(2) Industrial education centers: The board of commissioners of a county in which is located an industrial education center heretofore operated or authorized to operate as part of the public school system and which hereafter shall be operated as an industrial education center or technical institute as defined in this chapter, may levy special taxes annually at a rate sufficient to provide funds for the financial support of the center or institute required by § 115A-19 (a). The board of commissioners may also provide all or part of such funds by appropriations, in a manner consistent with the County Fiscal Control Act, from nontax revenues. The board of commissioners is authorized to provide additional funds, either by special tax levies or by appropriations from nontax revenues, or both, to an amount equal to that required to be provided above, for the purpose of supplementing the current expense budget of the center or institute financed from State funds.

(b) The board of commissioners of a county in which is located one of the above public community colleges or industrial education centers may provide funds for capital outlay for such institution by the issuance of bonds. All bonds shall be issued in accordance with the appropriate provisions of §§ 115A-20 and 115A-22.

(c) Public funds provided a community college or industrial education center prior to its becoming subject to the provisions of this chapter and which remain to the credit of the institution upon its becoming subject to these provisions, shall be expended only for the purposes prescribed by law when such funds were provided the institution. (1963, c. 448, s. 23; 1965, c. 842, s. 1.)

Editor's Note. — The 1965 amendment made subdivision (2) of subsection (a) applicable to technical institutes.

Section 2, c. 842, Session Laws 1965, provides: "All expenditures of funds heretofore expended by counties for local financial support for institutions which have been converted from industrial education centers to a technical institute are hereby ratified, validated and confirmed."

Session Laws 1963, c. 448, from which this chapter derives, was ratified May 17, 1963, and became effective July 1, 1963.

§ **115A-22. Requests for elections to provide funds for institutions.** —(a) Formal requests for elections on the question of authority to appropriate nontax revenues and/or levy special taxes and to issue bonds, when such elections are to be held for the purpose of establishing an institution, shall be originated and submitted only in the following manner:

(1) Proposed multiple-county administrative areas: Formal requests for elections may be submitted jointly by all county boards of education in the proposed administrative area, or by petition of fifteen percent (15%) of the number of qualified voters of the proposed area who voted in the last preceding election for Governor, to the boards of commissioners of all counties in the proposed area, who may fix the time for such election by joint resolution which shall be entered in the minutes of each board.

(2) Proposed single-county administrative area: Formal requests shall be submitted by the board of education of any public school administrative unit within the county of the proposed administrative area or by petition of fifteen percent (15%) of the number of qualified voters of the county who voted in the last preceding election for Governor, to the board of commissioners of the county of the proposed administrative area, who may fix the time for such election by resolution which shall be entered in the minutes of the board.

(b) Formal requests for elections on any of the questions specified in (a) above, or on the question of increasing the maximum annual rate of special taxes for the financial support of an institution with a properly established board of trustees, may be submitted to the tax levying authority only by such board of trustees.

(c) All formal requests for elections regarding the levy of special taxes shall state the maximum annual rate for which approval is to be sought in an election.

(d) Nothing in this section shall be construed to deny or limit the power of the tax levying authority of an institution to hold elections, of its own motion, on any or all the questions provided in this section, subject to the provisions herein. (1963, c. 448, s. 23.)

§ **115A-23. Elections on question of conversion of institutions and issuance of bonds therefor.** — Whenever the board of trustees of an institution requests the State Board of Education to convert the institution from an industrial education center to a technical institute or community college, or from a technical institute to a community college, the Board may require, as a prerequisite to such conversion:

(1) The authorization by the voters of the administrative area of an annual levy of taxes within a specified maximum annual rate sufficient to provide the required local financial support for the converted institution, in an election held in accordance with the appropriate provisions of §§ 115A-20 and 115A-22.

(2) The approval by the voters of the administrative area of the issuance of bonds for capital outlay necessary for the conversion of the institution, in an election held in accordance with the appropriate provisions of §§ 115A-20 and 115A-22. (1963, c. 448, s. 23.)

§ **115A-24. Payment of expenses of special elections under chapter.** — The cost of special elections held under the authority of this chapter in connection with the establishment of an institution shall be paid out of the general fund of the county or counties which shall conduct such elections. All special elections held on behalf of a duly established institution shall be paid by such institution and the expenses may be included in the annual institutional budgets. (1963, c. 448, s. 23.)

§ **115A-25. Authority to issue bonds and notes, to levy taxes and to appropriate nontax revenues.**—Counties are authorized to issue bonds and notes and to levy special taxes to meet payments of principal and interest on such bonds or notes and to levy special taxes for the special purpose of providing local financial support of an institution and otherwise to appropriate nontax revenues for the financial support of an institution, in the manner and for the purposes provided in this chapter.

Taxes authorized by this section are declared to be for a special purpose and may be levied notwithstanding any constitutional limitation or limitations imposed by any general or special law. (1963, c. 448, s. 23.)

§ **115A-26. Student tuition and fees.**—The State Board of Education may fix and regulate all tuition and fees charged to students for applying to or attending any institution pursuant to this chapter.

The receipts from all student tuition and fees, other than student activity fees, shall be State funds and shall be deposited as provided by regulations of the State Board of Education. (1963, c. 448, s. 23.)

Cross Reference. — As to contracts by minors borrowing for higher education at junior colleges and industrial education centers, see § 116-174.1.

Article 4.

Budgeting, Accounting, and Fiscal Management.

§ **115A-27. Preparation and submission of institutional budgets.**—On or before the first day of May of each year, the trustees of each institution shall prepare and submit a capital outlay budget and a current expense budget, on forms provided by the State Board of Education, and may prepare in their discretion a supplemental current expense budget. The budgets shall be prepared and submitted for approval according to the following procedures:

(1) Capital outlay budget: The budget shall contain the items of capital outlay, as provided in §§ 115A-18 and 115A-19, for which funds are requested, from whatever source. The budget shall be submitted first to the tax levying authority, which shall approve or disapprove, in whole or in part, that portion of the budget requesting local public funds. Upon approval by the tax levying authority, the budget shall be submitted by the trustees to the State Board of Education, which may approve or disapprove, in whole or in part, that portion of the budget requesting State or federal funds.

(2) Current expense budget: The budget shall contain the items of current operating expenses, as provided in §§ 115A-18 and 115A-19, for which funds are requested, from whatever source. The budget shall be submitted first to the tax levying authority, which shall approve or disapprove, in whole or in part, that portion of the budget requesting local public funds. Upon approval by the tax levying authority, the budget shall be submitted by the trustees to the State Board of Education, which may approve or disapprove, in whole or in part, the entire budget. The State Board is authorized to withhold the allocation of State funds to an institution until a budget has been submitted to and approved by the Board.

(3) Supplemental current expense budget: The budget may contain any items of the current expense budget to be financed from State or federal funds which the trustees desire to supplement with local funds. The tax levying authority shall approve or disapprove, in whole or in part, that portion of the budget requesting local public funds. An information copy of the budget as approved shall be filed with the State Board of Education.

(4) No public funds shall be provided an institution, either by the tax levying authority or by the State, except in accordance with the budget provisions of this chapter.

(5) The preparation of a budget for and the payment of interest and principal on indebtedness incurred on behalf of an institution shall be the responsibility of the county accountant or county accountants of the administrative area and the board of trustees of the institution shall have no duty or responsibility in this connection. (1963, c. 448, s. 23.)

§ 115A-28. Administration of institutional budgets for local public funds. — (a) Duty of boards of trustees: It shall be the duty of the board of trustees of each institution to pay all obligations incurred in the operation of the institution promptly and when due, and to this end boards of trustees shall inform the tax levying authority from month to month of any anticipated expenditures which will exceed the current collection of taxes and such balance as may be on hand, if any, for the payment of said obligations, in order that the tax levying authority may make provision for the funds to be available. If a board of trustees shall willfully create a debt that shall in any way cause the expense of the year to exceed the amount authorized in the budget, without the approval of the tax levying authority, the indebtedness shall not be a valid obligation of the institution and the members of the board responsible for creating the debt may be held personally liable for the same.

(b) Duty of tax levying authorities: It shall be the duty of the tax levying authority of each institution to provide, as needed, the funds to meet the monthly expenditures, including salaries and other necessary operating expense, as set forth in a statement prepared by the board of trustees and in accordance with the approved budget. If the collection of taxes does not yield sufficient revenue for this purpose, it shall be the duty of the tax levying authority to borrow against the amount approved in the budget and to issue short term notes for the amount so borrowed in accordance with the provisions of the County Finance Act and the Local Government Act. The interest on all such notes shall be provided by the tax levying authority in addition to the amount approved in the budget, unless this item is specifically included in the budget. (1963, c. 448, s. 23.)

§ 115A-29. Payment of State and local public funds to boards of trustees. — (a) The State Board of Education may deposit funds in the State treasury to the credit of each institution in monthly installments, at such time and in such manner as may be necessary to meet the needs of the institution, or the Board may disburse State funds to each institution under policies and regulations established by the Board. Prior to the deposit or disbursement of State funds by the Board it shall be the duty of the board of trustees of each institution to file, on or before the first day of each month, with the State Board of Education a certified statement, on forms provided by the State Board of Education, of all expenditures, salaries, and other obligations that may be due and payable in the next succeeding month.

(b) Upon the basis of an approved budget, the county auditors or accountants of all counties of the administrative area of an institution shall determine the proportion of taxes, nontax revenues and other funds accruing to the current expense and capital outlay budgets of the institution and shall credit these funds to the institution as they are collected. The county treasurer or corresponding official of each county shall remit promptly at the end of each month all funds collected for current expenses and capital outlay, except bond funds, to the board of trustees of the institution.

In the event that a greater amount is collected and paid to the board of trustees of an institution than is authorized by its approved budgets for current expenses and capital outlay, the excess shall remain an unencumbered balance to be credited proportionally to those funds in the following fiscal year, and such excess shall not be spent, committed, or obligated unless the budget is revised with the approval of the board of trustees and the tax levying authority.

(c) Funds received by the trustees of an institution from insurance payments for loss or damage to buildings shall be used for the repair or replacement of such buildings or, if the buildings are not repaired or replaced, to reduce proportionally the institutional indebtedness borne by the counties of the administrative area of the institution receiving the insurance payments. If such payments which are not used to repair or replace institutional buildings exceed the total institutional indebtedness borne by all counties of the administrative area, such excess funds shall remain to the credit of the institution and be applied to the next succeeding capital outlay budgets until the excess fund shall be expended. Funds received by the trustees of an institution for loss or damage to the contents of buildings shall be divided between the board of trustees and the State Board of Education in proportion to the value of the lost contents owned by the board of trustees and the State, respectively. That portion retained by the trustees shall be applied to the repair or replacement of lost contents or shall remain to the credit of the institution to be applied to the next succeeding capital outlay and current expense budgets, as appropriate, until such funds shall be expended. (1963, c. 448, s. 23.)

§ 115A-30. Disbursement of institutional funds. — Public funds provided for an institution shall be paid out as follows:

(1) State funds: All State funds received by or deposited to the credit of an institution shall be disbursed only upon warrants drawn on the State Treasurer and signed by two employees of the institution who shall have been designated by the board of trustees and who shall have been approved by the State Board of Education. Such funds may be dis-

bursed in any other manner provided by regulations of the State Board of Education.

(2) Local funds: All local public funds received by or credited to an institution shall be disbursed on warrants signed by two employees of the institution who shall have been designated by the board of trustees and who shall have been approved by the State Board of Education. Such warrants shall be countersigned by the appropriate county officer or officers as provided by law, but only if the funds required by such warrant are within the amount of funds remaining to the credit of the institution and are within the unencumbered balance of the appropriation for the item of expenditure according to the approved budgets of the institution: Provided, that in lieu of countersignature by the county officer or officers as provided by law, the board of county commissioners which appropriated the local public funds may from time to time, with the approval of the board of trustees of the institution, designate an employee of the institution to countersign the warrants, and the employee so designated shall countersign a warrant only if the funds required by such warrant are within the amount of funds remaining to the credit of the institution and are within the unencumbered balance of the appropriation for the item of expenditure according to the approved budgets of the institution. Each warrant shall be accompanied by an invoice, statement, voucher, or other basic document which indicates to the satisfaction of the countersigning county officer or officers that the issuance of such warrant is proper. (1963, c. 448, s. 23; 1965, c. 488, s. 2.)

Local Modification. — Duplin County: 1965, c. 961, s. 1.

Editor's Note. — The 1965 amendment inserted the proviso in subdivision (2).

§ **115A-31. Purchase of equipment and supplies.**—It shall be the duty of the several boards of trustees to purchase all supplies, equipment, and materials in accordance with contracts made by or with approval of the North Carolina Department of Administration. No contract shall be made by any board of trustees for purchases unless provision has been made in the budget of the institution to provide payment therefor, and in order to protect the State purchase contracts, it is the mandatory duty of the board of trustees and administrative officers of each institution to pay for such purchases promptly in accordance with the contract of purchase. (1963, c. 448, s. 23.)

§ **115A-32. Audits of institutional accounts.**—The State Auditor shall be responsible for conducting annually a thorough post audit of the receipts, expenditures, and fiscal transactions of each institution.

The annual audits shall be completed as near to the close of the fiscal year as practicable and copies of each audit shall be filed with the chairman of the board of trustees, the executive head of the institution, the county auditor of each county of the administrative area, the State Board of Education, and the Director of the Local Government Commission. (1963, c. 448, s. 23.)

§ **115A-33. Surety bonds.** — The State Board of Education shall determine what State employees and employees of institutions shall give bonds for the protection of State funds and property and the Board is authorized to place the bonds and pay the premiums thereon from State funds.

The board of trustees of each institution shall require all institutional employees authorized to draw or approve checks or vouchers drawn on local funds, and all persons authorized or permitted to receive institutional funds from whatever source, and all persons responsible for or authorized to handle institutional property, to be bonded by a surety company authorized to do business in this State in such amount as the board of trustees deems sufficient for the protection of such property and funds. The tax levying authority of each institution shall provide the funds necessary for the payment of the premiums of such bonds. (1963, c. 448, s. 23.)

§ **115A-34. Fire and casualty insurance on institutional buildings and contents.** — (a) The board of trustees of each institution, in order to safeguard the investment in institutional buildings and their contents, shall

(1) Insure and keep insured each building owned by the institution to the extent of the current insurable value, as determined by the insured and insurer, against loss by fire, lightning, and the other perils embraced in extended coverage; and

(2) Insure and keep insured equipment and other contents of all institutional buildings that are the property of the institution or the State or which are used in the operation of the institution.

(b) The tax levying authority of each institution shall provide the funds necessary for the purchase of the insurance required in (a) above.

(c) Boards of trustees may purchase insurance from companies duly licensed and authorized to sell insurance in this State or may obtain insurance in accordance with the provisions of article 16, chapter 115, of the General Statutes, "State Insurance of Public School Property." (1963, c. 448, s. 23.)

§ **115A-35. Liability insurance; tort actions against boards of trustees.** — (a) Boards of trustees may purchase liability insurance only from companies duly licensed and authorized to sell insurance in this State. Each contract of insurance must by its terms adequately insure the board of trustees against any and all liability for any damages by reason of death or injury to person or property proximately caused by the negligence or torts of the agents and employees of such board of trustees or institution when acting within the scope of their authority or the course of their employment. Any company which enters into such a contract of insurance with a board of trustees, by such act waives any defense based upon the governmental immunity of such board.

(b) Any person sustaining damages, or in case of death, his personal representative, may sue a board of trustees insured under this section for the recovery of such damages in any court of competent jurisdiction in this State, but only in a county of the administrative area of the institution against which the suit is brought; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of a governmental, municipal, or discretionary function of such board of trustees, to the extent that such board is insured as provided by this section.

(c) Nothing in this section shall be construed to deprive any board of trustees of any defense whatsoever to any action for damages, or to restrict, limit, or otherwise affect any such defense; and nothing in this section shall be construed to relieve any person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to the board of trustees or commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by law.

(d) No part of the pleadings which relate to or allege facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. Liability shall not attach unless the plaintiff shall waive the right to have all issues of law and fact relating to insurance in such action determined by a jury, and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony or announcements of findings of fact or conclusions of law with respect thereto, unless the defendant shall request jury trial thereon.

(e) The board of trustees of all institutions in this chapter are authorized to pay as a necessary expense the lawful premiums of liability insurance provided in this section. (1963, c. 448, s. 23.)

Article 5.

Special Provisions.

§ 115A-36. Authorization for transfer of State appropriations.—(a) Upon transferal of the administration and operation of industrial education centers from the State public school system to the provisions of this chapter, and upon request from the State Board of Education, the Director of the Budget, with the approval of the Advisory Budget Commission, is authorized to transfer funds appropriated to the State Board of Education for the support of industrial education centers under the title of "Vocational Education" to appropriation accounts established for the support of the institutions provided in this chapter.

(b) Upon transferal of the administration and operation of a community college from the provisions of article 3, chapter 116, of the General Statutes of North Carolina, to the provisions of this chapter, and upon request of the State Board of Education, the Director of the Budget, with the approval of the Advisory Budget Commission, is authorized to transfer funds appropriated to the Department of Administration under the title of "Community Colleges" to appropriation accounts established for the support of the institutions provided in this chapter. (1963, c. 448, s. 23.)

§ 115A-37. Multiple county administrative areas. — Should two or more counties determine to form an administrative area for the purpose of establishing and supporting an institution, the boards of commissioners of all such counties shall jointly propose a contract to be submitted to the State Board of Education as part of the request for establishment of an institution. The contract shall provide, in terms consistent with this chapter, for financial support of the institution, selection of trustees, termination of the contract and the administrative area, and any other necessary provisions. The State Board of Education shall have authority to approve the terms of the contract as a prerequisite for granting approval of the establishment of the institution and the administrative area. (1963, c. 448, s. 23.)

§ 115A-38. Special provisions for Central Piedmont Community College. — (a) As soon as practicable in accordance with the provisions of § 115A-4, transferal shall be made of the administration and operation of Mecklenburg College and Charlotte Central Industrial Education Center from their respective administrative boards to a single board of trustees selected as provided in § 115A-7 (a). The two institutions shall thereafter constitute the Central Piedmont Community College, which shall be operated in accordance with the provisions of this chapter as a single institution.

(b) The board of commissioners of Mecklenburg County is authorized to provide the local financial support for the Central Piedmont Community College as provided in § 115A-19 by levying a special tax to a maximum annual rate equal to the maximum rate last approved by the voters of the county for the support of the Central Piedmont Community College as operated pursuant to article 3, chapter 116, of the General Statutes of North Carolina, or by appropriations from nontax revenues, or by both. The question of increasing the maximum annual rate may be submitted at an election held in accordance with the provisions of § 115A-20 (d) and the appropriate provisions of § 115A-22.

(c) When, in the opinion of the board of trustees of said institution, the use of any building, building site, or other real property owned or held by said board is unnecessary or undesirable for the purposes of said institution, the board of trustees may sell, exchange, or lease such property in the same manner as is provided by law for the sale, exchange, or lease of school property by county or city boards of education. The proceeds of any such sale or lease shall be used for capital outlay purposes. (1963, c. 448, s. 23; 1965, c. 402.)

Editor's Note. — The 1965 amendment substituted "Central Piedmont Community College" for "Charlotte Community College System" throughout subsections (a) and (b), and added subsection (c).

Article 6.

Textile Training School.

§ 115A-39. Creation of board of trustees; members and terms of office; no compensation. — The affairs of the North Carolina Vocational Textile School shall be managed by a board of trustees composed of six members, who shall be appointed by the Governor, and the State Director of Vocational Education as ex officio member thereof. The terms of office of the trustees appointed by the Governor shall be as follows: Two of said trustees shall be appointed for a term of two years; two for three years; and two for four years. At the expiration of such terms, the appointments shall be made for periods of four years. In the event of any vacancy on said boards, the vacancy shall be filled by appointment by the Governor for the unexpired term of the member causing such vacancy. The members of the said board of trustees appointed by the Governor shall serve without compensation. The reenactment of this section shall not have the effect of vacating the appointment or changing the terms of any of the members of said board of trustees heretofore appointed. (1955, c. 1372, art. 27, s. 1; 1963, c. 448, s. 30.)

Editor's Note. — This article formerly appeared as §§ 115-236 to 115-239. It was transferred to its present position by Session Laws 1963, c. 448, s. 30.

§ 115A-40. Powers of board.—The said board of trustees shall hold all the property of the North Carolina Vocational Textile School and shall have the authority to direct and manage the affairs of said school, and within available appropriations therefor, appoint a managing head and such other officers, teachers and employees as shall be necessary for the proper conduct thereof. The board of trustees, on behalf of said school, shall have the right to accept and administer any and all gifts and donations from the United States government or from any other source which may be useful in carrying on the affairs of said school. Provided, however, that the said board of trustees is not authorized to accept any such funds upon any condition that the said school shall be operated contrary to any provision of the Constitution or statutes of this State. (1955, c. 1372, art. 27, s. 2; 1963, c. 448, s. 30.)

§ 115A-41. Board vested with powers and authority of former boards. — The board of trustees acting under authority of this article is vested with all the powers and authority of the board created under authority of chapter 360 of the Public Laws of 1941, and the board created under authority of chapter 806 of the Session Laws of 1945. (1955, c. 1372, art. 27, s. 3; 1963, c. 448, s. 30.)

§ 115A-42. Persons eligible to attend institution; subjects taught. —Persons eligible for attendance upon this institution shall be at least sixteen years of age and legal residents of the State of North Carolina: Provided, that out-of-state students, not to exceed ten percent (10%) of the total enrollment, may be enrolled when vacancies exist, upon payment of tuition, the amount of tuition to be determined by the board of trustees. The money thus collected is to be deposited in the treasury of the North Carolina Vocational Textile School, to be used as needed in the operation of the school. The institution shall teach the general principles and practices of the textile manufacturing and related subjects. (1955, c. 1372, art. 27, s. 4; 1963, c. 448, s. 30.)

Chapter 116.

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Article 1.

The University of North Carolina.

Part 1. General Provisions.

§ **116-1. Constitutional provisions.**—The General Assembly shall have power to provide for the election of trustees of the University of North Carolina, in whom, when chosen, shall be vested all the privileges, rights, franchises and endowments thereof, in anywise granted to or conferred upon the trustees of such University; and the General Assembly may make provisions, laws, and regulations from time to time as may be necessary and expedient for the maintenance and management of such University. The General Assembly shall provide that the benefits of the University, as far as practicable, be extended to the youth of the State free of expense for tuition: also that all the property which has heretofore accrued to the State, or shall hereafter accrue, from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons, shall be appropriated to the use of the University, and the General Assembly shall establish and maintain, in connection with the University, a department of agriculture, of mechanics, of mining, and of normal instruction. (Const. art. 9, ss. 6, 7, 14; Rev., s. 4259; C. S., s. 5781.)

Editor's Note.—The title of this chapter was changed from "Educational Institutions of the State" to "Higher Education" by Session Laws 1963, c. 448, s. 32.

Section Repeats Constitutional Provision. — The General Assembly repeated N.C. Const., Art. IX, § 6, ipsissimis verbis in this section. In re Carter, 262 N.C. 360, 137 S.E.2d 150 (1964).

Power of Board to Make Rules and Regulations.—Under the Constitution and statutes of this State, the management of the University of North Carolina is delegated to and invested in the board of trustees, and the board of trustees may make all necessary and proper and reasonable rules and regulations for the orderly management and government of the University of North Carolina and for the preservation of discipline of its students. In re Carter, 262 N.C. 360, 137 S.E.2d 150 (1964).

The word "dividends" in this section is synonymous with "distributive shares," and is used as a convertible term. Trustees of the Univ. v. North Carolina R.R., 76 N.C. 103 (1877).

Stated in Frasier v. Board of Trustees, 134 F. Supp. 589 (M.D.N.C. 1955).

§ **116-2. Consolidated University of North Carolina.**—(a) The University of North Carolina, the North Carolina State College of Agriculture and Engineering, and the North Carolina College for Women are hereby consolidated and merged into "The University of North Carolina." The said "The University of North Carolina" shall constitute one university, and the only university primarily dependent for its support on the State of North Carolina. Without diminishing its consolidated, merged, and unified status, the University shall be comprised of constituent, subordinate, and component institutions and campuses of higher education which, for the purpose of maintaining their traditional and historical identity and integrity, shall be lawfully known and designated only as provided in subsection (b) of this section.

(b) Those three campuses of the University shall be designated respectively "The University of North Carolina at Chapel Hill," "North Carolina State University at Raleigh," and "The University of North Carolina at Greensboro"; and any general campus or campuses of the University hereafter established shall be designated "The University of North Carolina at .... (place name)." All statutory references to the three existing campuses of the University of North Carolina are amended to conform to the requirements of this section.

On July 1, 1965, the University of North Carolina at Charlotte shall become a campus of the University of North Carolina. (1931, c. 202, s. 1; 1963, c. 448, s. 1; 1965, c. 31, s. 1; c. 213.)

Editor's Note. — The 1963 amendment added the second paragraph.

The first 1965 amendment added the last paragraph.

The second 1965 amendment designated the paragraphs of the section as subsections (a) and (b), added the second and third sentences in subsection (a) and substituted "North Carolina State University at Raleigh" for "North Carolina State of the University of North Carolina at Raleigh" in subsection (b).

Stated in Frasier v. Board of Trustees, 134 F. Supp. 589 (M.D.N.C. 1955).

§ 116-2.1. Establishment of additional campuses of the University.—The procedure and standards for the establishment of an additional campus or campuses of the University of North Carolina shall be as follows:

(1) Whenever the board of trustees of the University finds that there may be a need for an additional campus or campuses of the University, the board shall direct that a study be made of the relevant educational needs of the State, such study to take particular account of the relevant educational needs of the area or areas of the State designated by the board of trustees.

(2) The board of trustees of the University shall give careful consideration to the report on the aforementioned study of educational needs, and if the board finds

  a. That sufficient educational needs exists to justify the establishment of an additional campus or campuses of the University, and

  b. That it appears probable that sufficient additional funds can be made available to establish and maintain such additional campus or campuses without impairing the quality and extent of the instructional and research programs at the existing campuses of the University, then the board of trustees shall establish such additional campus or campuses at a place or places designated by the board, subject to

    1. The approval of the North Carolina Board of Higher Education, and

    2. The approval and provision of adequate financial support for the proposed additional campus or campuses by the General Assembly.

(3) The standards and criteria prescribed by the board of trustees of the University for the existing campuses of the University shall apply to any additional campus or campuses of the University which may be established. (1963, c. 448, s. 2.)

§ 116-3. Incorporation and corporate powers.—The trustees of the University shall be a body politic and corporate, to be known and distinguished by the name of the "University of North Carolina," and by that name shall have perpetual succession and a common seal; and by that name shall be able and capable in law to take, demand, receive, and possess all moneys, goods, and chattels that shall be given for the use of the University, and to apply the same according to the will of the donors; and by gift, purchase, or devise to receive, possess, enjoy, and retain forever any and all real and personal estate and funds, of whatsoever kind, nature, or quality the same may be, in special trust and confidence that the same, or the profits thereof, shall be applied to and for the use and purpose of establishing and endowing the University, and shall have power to receive donations from any source whatever, to be exclusively devoted to the purposes of the maintenance of the University, or according to the terms of donation.

The corporation, by its corporate name, shall be able and capable in law to bargain, sell, grant, alien, or dispose of and convey and assure to the purchasers any and all such real and personal estate and funds as it may lawfully acquire when the condition of the grant to it or the will of the devisor does not forbid it; and shall be able and capable in law to sue and be sued in all courts whatsoever; and shall have power to open and receive subscriptions, and in general may do all such things as are usually done by bodies corporate and politic, or such as may be necessary for the promotion of learning and virtue.

In addition to these powers, the board of trustees shall succeed to all the rights, privileges, duties and obligations by law, or otherwise, enjoyed by or imposed upon the University of North Carolina, the North Carolina State College of Agriculture and Engineering, and the North Carolina College for Women, prior to March 27, 1931. (1789, c. 305, ss. 1, 2, P. R.; R. S., vol. 2, pp. 424, 425; 1874-5, c. 236, s. 2; Code, ss. 2610, 2611, 2630; Rev., ss. 4260, 4261; C. S., s. 5782; 1931, c. 202, s. 4.)

Power of Board to Make Rules and Regulations.—See note to § 116-1.

Capacity to Take Devise.—See Brewer v. University of North Carolina, 110 N.C. 26, 14 S.E. 644 (1892).

§ **116-3.1**: Repealed by Session Laws 1963, c. 448, s. 3.

§ **116-4. Trustees; number, election and term.**—There shall be one hundred trustees of the University of North Carolina, at least ten of whom shall be women, who shall be elected by the General Assembly by joint ballot of both houses. The General Assembly in one thousand nine hundred and thirty-one shall elect such trustees, and their terms of office shall commence on July 1, 1932.

Twenty-five of the trustees shall be elected for terms expiring April 1, 1933, twenty-five for terms expiring April 1, 1935, twenty-five for terms expiring April 1, 1937, and twenty-five for terms expiring April 1, 1939. As and when their terms respectively expire, their successors shall be elected by the General Assembly by joint ballot for terms of eight years. Trustees shall continue to serve until their successors are elected. The Superintendent of Public Instruction is ex officio a trustee of the University.

The members of the board of trustees of the University or other State institutions of North Carolina shall be deemed commissioners of public charities within the meaning of the proviso to section seven of Art. XIV of the Constitution of North Carolina. (Const., art. 9, s. 6; 1873-4, c. 64; 1876-7, c. 121, ss. 1, 2; 1883, c. 124, ss. 1, 2; Code, ss. 2620, 2625; Rev., s. 4268; 1909, c. 432; 1917, c. 47; C. S., s. 5789; 1931, c. 202, ss. 4, 5; 1937, c. 139; 1963, c. 448, s. 18.)

Editor's Note. — The 1963 amendment inserted the third sentence of the second paragraph.

This section is constitutional. Trustees of the Univ. of North Carolina v. McIver, 72 N.C. 76 (1875).

Stated in In re Carter, 262 N.C. 360, 137 S.E.2d 150 (1964).

§ **116-5. Living Governors made honorary members of board of trustees.**—Each of the former Governors of North Carolina now living is hereby made an honorary member of the board of trustees of the University of North Carolina for life, with the power to vote on all matters coming before said board of trustees for consideration. The present Governor of North Carolina, and each succeeding Governor, shall, at the expiration of the term of office of each, automatically become an honorary member of the board of trustees of the University of North Carolina for life, with the power to vote on all matters coming before the said board of trustees for consideration. (1941, c. 136.)

§ **116-6. Trustees may remove members of board.**—The board of trustees shall have power to vacate the appointment and remove a trustee for improper conduct, stating the cause of such removal on the journal; but this shall not be done except at a regular meeting of the board, and there shall be present at the doing thereof at least sixty-five of the members of the board. (R. S., vol. 2, p. 432; Code, s. 2619; Rev., s. 4270; C. S., s. 5790; 1963, c. 448, s. 20.)

Editor's Note. — The 1963 amendment substituted "sixty-five" for "twenty" near the end of the section.

§ **116-7. Filling vacancies in board.**—Whenever any vacancy shall happen in the board of trustees it shall be the duty of the secretary of the board of trustees to communicate to the General Assembly the existence of such vacancy, and thereupon there shall be elected by joint ballot of both houses a suitable person to fill the same. Whenever a trustee shall fail to be present for two successive years at the regular meetings of the board, his place as trustee shall be deemed vacant within the meaning of this section, but shall not apply to members serving in any branch of the United States armed forces or in the military forces of any of the allies of the United States. (1804, c. 647, P. R.; 1805, c. 678, s. 2, P. R.; 1873-4, c. 64, s. 3; Code, s. 2622; 1891, c. 98; Rev., ss. 4271, 4272; 1907, c. 828; C. S., s. 5791; 1943, c. 175.)

§ **116-8. Meetings of trustees, regular and special; quorum.**—There shall be three regular meetings of the board of trustees each calendar year. One of these regular meetings shall be in the city of Raleigh, which meeting shall be held during the session of the General Assembly during the years that body convenes. The other regular meetings shall be held at such time and place as the Governor may appoint. At any of the regular meetings of the board any number of trustees, not less than fifty-one, shall constitute a quorum and be competent to exercise full power and authority to do the business of the corporation; and the board or the Governor shall have power to appoint special meetings of the trustees at such time and place as, in their opinion, the interest of the corporation may require; but no special meeting shall have power to revoke or alter any order, resolution, or vote of any regular meeting; and the board of trustees at any regular meeting may, by resolution, vote, or ordinance, from time to time, as to it shall seem meet, limit, control, and restrain the business to be transacted, and the power to be possessed and exercised by special meetings of the board, called according to law, and the powers of such special meetings shall be limited, controlled and restrained accordingly. And every order, vote, resolution, or other act done, made, or adopted by any special meeting, contrary to any order, resolution, vote, or ordinance of the board at any regular meeting shall be absolutely, to all intents and purposes, null and void. (R. S., vol. 2, p. 433; 1873-4, c. 64, s. 2; Code, ss. 2616, 2618, 2621; Rev., s. 4269; C. S., s. 5792; 1963, c. 448, ss. 19, 20.)

Editor's Note. — The 1963 amendment substituted "three" for "two" in the first sentence, "meetings" for "meeting" in the third sentence, and "fifty-one" for "ten" near the beginning of the fourth sentence.

§ **116-9. Governor to preside at trustees' meetings or appoint presiding officer.**—The Governor shall preside at all the meetings of the board at which he may be present; and if, by indisposition or other cause, the Governor shall be absent from any meeting of the board, he may appoint, in writing, some other person, being a trustee, to act in his stead for the time being, which appointee shall preside accordingly; and if at any time the Governor shall be absent from the meeting of the board and shall not have appointed some trustee to act in his stead it shall be lawful for the board to appoint some one of their number to preside for the time being. (1805, c. 678, P. R.; R. S., vol. 2, p. 432; Code, s. 2615; Rev., s. 4263; C. S., s. 5788.)

§ **116-10. Rules and regulations.**—The trustees shall have power to make such rules and regulations for the management of the University as they may deem necessary and expedient, not inconsistent with the constitution and laws of the State. (1873-4, c. 64, s. 4; Code, s. 2623; Rev., s. 4273; C. S., s. 5794.)

Rules and Regulations for Preservation of Discipline.—The board of trustees may make all necessary and proper and reasonable rules and regulations for the orderly management and government of the University of North Carolina and for the preservation of discipline of its students. In re Carter, 262 N.C. 360, 137 S.E.2d 150 (1964).

Resolution on Admission of Negroes.—Resolution of board of trustees of the University of North Carolina declaring the policy of the board that applications of negroes to the undergraduate schools of the University be not accepted violated the equal protection clause of the 14th Amendment to the U.S. Constitution. Frasier v. Board of Trustees, 134 F. Supp. 589 (M.D.N.C. 1955), aff'd, 350 U.S. 979, 76 Sup. Ct. 467, 100 L. Ed. 848 (1956).

§ **116-11. Executive committee.**—The trustees shall have power to appoint from their own number an executive committee which shall be clothed with such powers as the trustees may confer. (1873-4, c. 64, s. 5; Code, s. 2624; Rev., s. 4267; C. S., s. 5795.)

Quoted in In re Carter, 262 N.C. 360, 137 S.E.2d 150 (1964).

§ **116-12. President and faculty.**—The trustees shall have the power of appointing a president of the University of North Carolina and such professors, tutors, and other officers as to them shall appear necessary and proper, whom they may remove for misbehavior, inability, or neglect of duty. (1789, c. 305, s. 7, P. R.; R. S., vol. 2, p. 427; Code, s. 2613; Rev., s. 4264; C. S., s. 5796.)

§ **116-13. Treasurer; duties and bond.**—The trustees shall elect and commission some person to be treasurer for the corporation during the term of two years and until his successor shall be elected and qualified; which treasurer shall enter into bond, with sufficient sureties, payable to the State of North Carolina, in the sum of not less than ten thousand dollars, conditioned for the faithful discharge of his office and the trust reposed in him, and that all moneys and chattels belonging to the corporation that shall be in his hands at the expiration of his office shall then be immediately paid and delivered into the hands of the succeeding treasurer. Every treasurer shall receive all moneys, donations, gifts, bequests, and charities whatsoever that may belong or accrue to the corporation during his office, and at the expiration thereof shall account with the trustees for the same, and the same pay and deliver over to the succeeding treasurer; and on his neglect or refusal so to pay and deliver the same proceedings may be had against him as is or may be provided for the recovery of moneys from sheriffs or other persons chargeable with public moneys. (1789, c. 305, s. 4, P. R.; R. S., vol. 2, p. 426; Code, s. 2612; Rev., s. 4265; C. S., s. 5797.)

§ **116-14. Vacancies in offices of secretary and treasurer.**—In case the office of secretary or treasurer of the corporation shall be vacant from any cause whatever in the recess of the board of trustees, the president shall appoint a suitable person to fill the same until the annual meeting of the board of trustees, at which time the board shall elect a proper person to fill such vacancy. (R. S., vol. 2, p. 433; Code, s. 2617; Rev., s. 4266; C. S., s. 5798.)

§ **116-15. Functions of the University.**—The University of North Carolina shall provide instruction in the liberal arts, fine arts, and sciences, and in the learned professions, including teaching, these being defined as those professions which rest upon advanced knowledge in the liberal arts and sciences; and shall be the primary state-supported agency for research in the liberal arts and sciences, pure and applied. The University shall provide instruction in the branches of learning relating to agriculture and the mechanic arts, and to other scientific and to classical studies. The University shall be the only institution in the State system of higher education authorized to award the doctor's degree. The University shall extend its influence and usefulness as far as possible to the persons of the State who are unable to avail themselves of its advantages as resident students, by extension courses, by lectures, and by such other means as may seem to them most effective. (1919, c. 199, s. 3; C. S., s. 5837; 1963, c. 448, s. 4.)

Editor's Note. — The 1963 amendment added the first three sentences.

§ **116-16. Awarding of degrees, etc., by consolidated University.**—The faculty of the University, that is to say, the president and professors, shall have the power of conferring all such degrees or marks of literary distinction as are usually conferred by colleges or universities. All degrees or marks of literary distinction conferred by the University of North Carolina or any of its component campuses as herein specified, shall be conferred by the faculty of the University of North Carolina or the faculty of any one of its component campuses by and with the consent of the board of trustees, but degrees or marks of literary distinction conferred by the faculty of any one of the said campuses shall designate the campus through or by which said degree or mark of literary distinction is conferred. (C. S., s. 5796; 1931, c. 202, s. 11; 1963, c. 448, s. 5.)

Editor's Note. — The 1963 amendment, substituted "campuses" for "colleges" in three places and "campus" for "college" in one place in the second sentence.

§ **116-17. Application of receipts.**—All receipts shall be applied to the maintenance and promotion of the particular unit of the University receiving same and to the objects specified in any laws making appropriations for its support, or in accordance with the expressed wishes of any donor, as far as practicable. (1907, c. 406, s. 17; C. S., s. 5815.)

§ **116-18. Gifts and endowments belong to institution to which made; administration of such funds.**—All gifts and endowments, whether moneys, goods or chattels, or real estate, heretofore or hereafter given or bestowed upon or conveyed to any one of the institutions, as existing before March 27, 1931, shall continue thereafter to be used, enjoyed, and administered by the particular unit to which they were given or conveyed; but if there were trusts, they shall be administered by said unit in accordance with the provisions of the trust deed creating them, for the benefit of the particular institution to which such trust deed was executed. The administration of all these funds, endowments, gifts, and contributions shall, however, be under the control of the board of trustees of the University of North Carolina. (1931, c. 202, s. 12.)

§ **116-19. Tax exemption.**—The lands and other property belonging to the corporation shall be exempt from all kinds of public taxation. (Const., art. 5, s. 5; 1789, c. 306, s. 3, P. R.; R. S., vol. 2, p. 428; Code, s. 2614; Rev., s. 4262; C. S., s. 5783.)

§ **116-20. Escheats to University.**—All real estate which has heretofore accrued to the State, or shall hereafter accrue from escheats, shall be vested in the University of North Carolina, and shall be appropriated to the use of that corporation. Title to any such real property which has escheated to the University of North Carolina, shall be conveyed by deed in the manner now provided by G.S. 146-74 through 146-78, except as is otherwise provided herein: Provided, that in any action in the superior court of North Carolina wherein the University of North Carolina is a party, and wherein said court enters a judgment of escheat in behalf of the University of North Carolina for any real property, then, upon petition of the University of North Carolina in said action, said court shall have the authority to appoint the escheat officer of the University of North Carolina as a commissioner for the purpose of selling said real property at a public sale, for cash, at the courthouse door in the county in which the property is located, after properly advertising the sale according to law. The said commissioner, when appointed by the court, shall have the right to convey a valid title to the purchaser of the property at public sale, but only after said sale shall have first been confirmed and approved by the comptroller of the University of North Carolina. The funds derived from the sale of any such escheated real property by the commissioner so appointed shall thereafter be paid by him into the escheat fund of the University of North Carolina. (Const., art. 9, s. 7; 1789, c. 306, s. 2; P. R.; R. C., c. 113, s. 11; Code, s. 2626; Rev., s. 4282; C. S., s. 5784; 1947, c. 494; 1961, c. 257.)

Editor's Note.—For a brief discussion of the 1947 amendment to this section and other provisions relating to escheats, see 25 N.C.L. Rev. 421.

Right Conferred by Constitution and Extended by Statute.—See Board of Educ., v. Johnston, 224 N.C. 86, 29 S.E.2d 126 (1944).

Vested Right Not Impaired by Repeal of Section. — The legislature cannot deprive the trustees of the University of escheated property which by virtue of statute has vested in them, by a subsequent act repealing the statute. Trustees of the Univ. of North Carolina v. Foy, 5 N.C. 58 (1805).

Land held by incorporated town held to escheat upon repeal of town charter under the facts of the case. University of North Carolina v. High Point, 203 N.C. 558, 166 S.E. 511 (1932).

Applied in In re Will of Neal, 182 N.C. 405, 109 S.E. 70 (1921).

Cited in Smith v. Dicks, 197 N.C. 355, 148 S.E. 464 (1929); Cutler v. Winfield, 241 N.C. 555, 85 S.E.2d 913 (1955).

§ 116-21. Unclaimed real and personal property escheats to the University of North Carolina.—Whenever the owner of any real or personal property situated or located within this State dies intestate, or dies testate but did not dispose of all real or personal property by will, without leaving surviving any heirs, kindred or spouse to inherit said property under the laws of this State, such real and personal property shall escheat to the University of North Carolina. The University of North Carolina shall have the right to institute a civil action in the superior court of any county in which such real or personal property is situated, against any administrator, executor, and unknown heirs or unknown claimants as party defendants, which unknown heirs or unknown claimants may be served with summons and notice of such action by publication as is now provided by the laws of this State. The superior court in which such civil action is instituted shall have the authority to enter a judgment therein declaring the real any personal property unclaimed as having escheated to the University of North Carolina, and the real property may be sold according to the provisions of § 116-20. A default final judgment may be entered by the clerk of the superior court in such cases when no answer is filed by the administrator, executor, unknown heirs or unknown claimants to the complaint, or if any answer is filed the allegations of the complaint are either admitted or not denied by such party defendants, and no claim is made in the answer to the property left by said deceased person. The funds derived from such sale shall be paid into the escheats fund of the University of North Carolina where said funds, together with all other escheated funds, shall be held without liability for profit, or interest subject to any just claims therefor. (1957, c. 1105, s. 1.)

§ 116-22. Unclaimed personalty on settlements of decedents' estates without heirs shall be paid over or delivered to the University of North Carolina.—All sums of money or other personal estate of whatever kind which shall remain in the hands of any administrator, executor, administrator c.t.a., or personal representative when the administration of an estate of a person dying intestate, or partially intestate, without leaving any known heirs or spouse to inherit same, is ready to be closed, unrecovered or unclaimed by suit, by creditors, next of kin, or others entitled thereto, shall, prior to the closing of the administration of the estate, be paid, or delivered, by such administrator or executor to the University of North Carolina as an escheat and shall be included in the disbursements in the final account of such estate. In such cases as above described, the University of North Carolina is authorized, on and after June 6, 1957, to demand, sue for, recover, and collect such unclaimed moneys or other personal estate of whatever kind from any administrator, or executor after the estate is ready to be closed, or from the clerk of the superior court if the unclaimed assets have been paid over to him, and the University of North Carolina shall hold the same without liability for profit or interest, subject to any just claims therefor. (1957, c. 1105, s. 2.)

§ 116-22.1. Sections 116-21 and 116-22 apply to administrator for estate of person missing for seven years.—The provisions of G.S. 116-21 and 116-22 shall likewise apply to an administrator for the estate of a person who has been missing for seven years, and who has been appointed administrator under G.S. 28-2.1, when the superior court shall find in an action brought by the University of North Carolina under G.S. 116-21 or 116-22 that such missing person left no lawful heirs or lawful claimants to the property of such missing person, and that such property has escheated to the University of North Carolina. (1957, c. 1105, s. 2½.)

§ 116-23. Other unclaimed personalty to University.—Personal property of every kind, except as is otherwise provided by this chapter, including dividends of corporations, or of joint-stock companies or associations, choses in action, and sums of money in the hands of any person, which shall not be recovered or claimed by the parties entitled thereto for three years after the same shall become due and payable, shall be deemed derelict property, and shall be paid or delivered to the University of North Carolina and held by it without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto. (Code, ss. 2628, 2629; Rev., s. 4284; C. S., s. 5786; 1947, c. 614, s. 2; 1957, c. 1049.)

Cross Reference. — See note under § 116-20.

Escheat Officer Not Liable.—Funds representing amounts apportioned to claimants of an insolvent bank who failed to prove their claims, which are turned over to the Secretary of State as escheat officer, are not assets of the liquidated bank, but are to be held by the University, subject solely to the rights of those who failed to prove their claims, and a depositor who proved his claim and received dividends thereon as a common claim may not hold the escheat officer liable for the balance unpaid on his claim upon his contention that the claim should have been paid in full as a preferred claim. Windley v. Lupton, 212 N.C. 167, 193 S.E. 213 (1937).

Cited in McMillan v. Robeson County, 262 N.C. 413, 137 S.E.2d 105 (1964).

§ 116-23.1. Unclaimed funds held or owing by life insurance companies.—(a) Definitions.—The term "unclaimed funds" as used in this section shall mean and include all moneys held and owing by any life insurance company doing business in this State which shall have remained unclaimed and unpaid for seven years or more after such moneys became due and payable under any life or endowment insurance policy, or moneys payable under annuity contracts or all dividends payable to holders of policies. A life insurance policy not matured by the prior death of the insured shall be deemed to be matured and the proceeds thereof shall be deemed to be "due and payable" within the meaning of this section when the insured shall have attained the limiting age under the mortality table on which the reserve is based. Moneys shall be deemed to be "due and payable" within the meaning of this section although the policy shall not have been surrendered nor proofs of death submitted as required and although the claim as to the payee is barred by a statute of limitations.

(b) Scope.—This section shall apply to all unclaimed funds, as herein defined, held and owing by any life insurance company doing business in this State where the last known address, according to the records of such company, of the person entitled to such funds is within this State, provided that if a person other than the insured be entitled to such funds and no address of such person be known to such company or if it be not definite and certain from the records of such company what person is entitled to such funds, then in either event it shall be presumed for the purposes of this section that the last known address of the person entitled to such funds is the same as the last known address of the insured according to the records of such company.

(c) Reports.—Every such life insurance company shall on or before the first day of May of each year make a report in writing to the Commissioner of Insurance of all unclaimed funds, as hereinbefore defined, held or owing by it on the thirty-first day of December next preceding. Such report shall be signed and sworn to by an officer of such company and shall set forth:

(1) In alphabetical order the full name of the insured, his last known address according to the company's records, and the policy number;
(2) The amount appearing from the company's records to be due on such policy;
(3) The date such unclaimed funds became payable;
(4) The name and last known address of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds; and
(5) Such other identifying information as the Commissioner of Insurance may require.

(d) Notice; Publication. — On or before the first day of September following the making of such reports under this section, the Commissioner of Insurance shall cause to be published notices entitled: "Notice of Certain Unclaimed Funds Held or Owing by Life Insurance Companies." Each such notice shall be published once a week for two successive weeks in a newspaper published in the county of this State in which is located such last known address of each such insured, or other person who, according to the company's records may have an interest in such unclaimed fund, or by posting such notice at the courthouse door of said county.

The notice shall set forth in alphabetical order the names contained in such reports of each insured whose last known address is within the county of publication together with

(1) The amount reported due and the date it became payable,
(2) The name and last known address of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds, and
(3) The name and address of the company.

The notice shall also state that such unclaimed funds will be paid by the company to persons establishing to its satisfaction before the following December 1st their right to receive the same, and that not later than December 1st such unclaimed funds still remaining will be paid to the University of North Carolina which shall thereafter be liable for the payment thereof.

It shall not be obligatory upon the Commissioner of Insurance to publish any item of less than fifty dollars in such notice, unless the Commissioner of Insurance deems such publication to be in the public interest. The expenses of publication shall be charged against the University of North Carolina.

(e) Payment to University of North Carolina.—All unclaimed funds contained in the report required to be filed under this section, excepting those which have ceased to be unclaimed funds since the date of such report, shall be paid over to the University of North Carolina on or before the following December 1st.

The Commissioner of Insurance shall have the power, for cause shown, to extend for a period of not more than one year the time within which a life insurance company shall file any report and in such event the time for publication and payment required by this section shall be extended for a like period.

(f) Custody of Unclaimed Funds; Insurers Exonerated. — Upon the payment of such unclaimed funds to the University of North Carolina, the State shall assume, for the benefit of those entitled to receive the same and for the safety of the money so paid, the custody of such unclaimed funds, and the life insurance company making such payment shall immediately and thereafter be relieved of and held harmless by the State from any and all liability for any claim or claims which exist at such time with reference to such unclaimed funds or which thereafter may be made or may come into existence on account of or in respect to any such unclaimed funds.

(g) Reimbursement for Claims Paid by Insurers. — Any life insurance company which has paid to the University of North Carolina moneys deemed unclaimed funds pursuant to the provisions of this section may make payment to any person appearing to such company to be entitled thereto, and upon proof of such payment the State of North Carolina shall forthwith reimburse such company to the extent of the full amount, without interest, paid the University of North Carolina for the account of such claimant.

(h) Determination and Review of Claims.—Any person entitled to unclaimed funds paid to the University of North Carolina may file a claim at any time with the Commissioner of Insurance. The Commissioner of Insurance shall possess full and complete authority to accept or reject any such claim. If he rejects such claim or fails to act thereon within ninety days after receipt of such claim, the claimant may make application to the Superior Court of Wake County, upon not less than thirty days' notice to the Commissioner of Insurance, for an order to show cause why he should not accept and order paid such claim.

(i) Payment of Allowed Claims.—Any claim which is accepted by the Commissioner of Insurance or ordered to be paid by a court of competent jurisdiction shall be paid by the University of North Carolina.

(j) Records Required.—The University of North Carolina shall keep a public record of each payment of unclaimed funds received from any life insurance company. Such record shall show in alphabetical order the name and last known address of each insured, and of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds, and with respect to each policy, its number, the name of the company, and the amount due.

(k) Payments to Other States; Pending Litigation.—This section shall not apply to or affect any unclaimed funds

(1) Which have been paid to another state or jurisdiction prior to March 31, 1949, or
(2) Which are at such date involved in litigation with reference to the custody, appropriation or escheat of such funds. (1949, c. 682; 1957, c. 1050; 1961, c. 493.)

§ **116-24. Certain unclaimed bank deposits to University.**—All bank deposits in connection with which no debits or credits have been entered within a period of five years, and where the bank is unable to locate the depositor or owner of such deposit, shall be deemed derelict property and shall be paid to the University of North Carolina and held by it, without liability for profit or interest, until a just claim therefor shall be preferred by the parties entitled thereto. The receipt of the University of North Carolina of any deposit hereunder shall be and constitute a release of the bank delivering over any deposit coming within the provisions of this section from any liability therefor to the depositor or any other person. Upon receipt of such funds, the University of North Carolina shall cause to be posted and kept posted for thirty days at the courthouse door of the county in which such bank is located, a notice giving the names of the persons in whose name or names such deposits were made in said bank, the amount thereof, and the last known address of such person, and the bank paying over said funds to the University of North Carolina shall furnish such information to be used in giving said notice. If any person at any time thereafter shall appear and show that he is the identical person to whom such funds are due, the University of North Carolina shall pay the same in full to such person, but without any liability for interest or profits thereon. Debits of service charges and debits of intangible taxes made by banks shall not be considered debits within the meaning of this section. A bank shall be deemed to be unable to locate a depositor or owner when the present address of the depositor or owner is unknown to the bank, and United States mail addressed to the depositor or owner at the last known address, with a return address of the sending bank on the envelope, is returned undelivered to the bank mailing the same. (1937, c. 400; 1939, c. 29; 1947, c. 614, s. 3; 1949, c. 1069.)

Cross References.—See note to § 116-20. As to escheat of dividends on unclaimed deposits in insolvent banks, see § 53-20, subsection (1).

Editor's Note.—See 15 N.C.L. Rev. 350. For comment on the 1949 amendment, see 27 N.C.L. Rev. 427.

§ **116-25. Other escheats.**—Unpaid and unclaimed salary, wages or other compensation due to any person or persons from any person, firm, or corporation within the State are hereby declared to be escheats coming within the laws of this State, and the same shall be paid to the University of North Carolina immediately upon the expiration of two years from the end of the calendar year in which the same becomes due, provided, that this paragraph shall not apply to any person, firm or corporation employing less than twenty-five persons.

Rebates and returns of overcharges and unclaimed meter deposits due by utility companies, which have not been paid to or claimed by the persons to whom they are due within a period of two years from the time they are due or from the time any refund was ordered by any court or by the Utilities Commission, shall be paid to the University of North Carolina.

All moneys in the hands of clerks of the superior court, the State Treasurer, or any other officer or agency of the State or county, or any other depository whatsoever, as proceeds of the limitations of State banks by receivers appointed in the superior court prior to the Liquidation Act of one thousand nine hundred twenty-seven, shall be immediately turned over into the custody of the University of North Carolina: Provided, however, that nothing in this section shall be construed to require the said clerk or other officer to turn over funds of minors or other incompetents in his possession, but the custody and control of the same shall be under existing law with reference thereto.

All moneys in the hands of the Treasurer of the State, represented by State warrants in favor of any person, firm, or corporation, whatsoever, which have been unclaimed for a period of five years, shall be turned over to the University of North Carolina.

Unpaid and unclaimed dividends or other distributions due to any person or persons from any association organized under subchapter IV or subchapter V of chapter 54 of the General Statutes are hereby declared to be escheats coming within the laws of this State, and the same shall be paid to the University of North Carolina immediately upon the expiration of five years from the time the same became due, provided that this paragraph shall not apply to a cooperative marketing association engaged only in the marketing of a single agricultural product for the producers thereof. This paragraph shall not apply to any stabilization program on any farm commodities when such program is maintained separate for the benefit of the producer thereof.

All moneys, claims, or other property coming into the possession of the University of North Carolina under this section shall be deemed derelict property and shall be held by it without liability for profit or interest until a just claim therefor shall be preferred by the parties entitled thereto.

Provided that this section shall not apply to the Agricultural Fund now on hand known as the State Warehouse Fund.

Any funds derived from the liquidation of any national bank organized and operated in this State, which has heretofore or which shall hereafter become insolvent, when such insolvent bank has been fully liquidated by a receiver appointed by the Comptroller of the Currency as provided by Title 12 of United States Code Annotated, sections 191 and 192, or any other federal law, or has been liquidated by any agent appointed as provided by Title 12 of United States Code Annotated, section 197, which shall remain under the control of the Comptroller of the Currency and deposited with the Treasurer of the United States, or deposited elsewhere, as authorized by law, which shall be due any depositor or stockholder of this State, which for a period of ten years after becoming due such depositor or stockholder or available for distribution to any stockholder in the liquidation of such insolvent bank, has not been paid over to such depositor or stockholder, or the legal representative of such depositor or stockholder, due to inability to locate and deliver the same to the person entitled thereto, shall be deemed derelict property and shall be paid over to the University of North Carolina by the Comptroller of the Currency, or by such agent as may have the funds in charge, to be held in protective custody by the University of North Carolina until a just claim shall be made for same by the owner thereof. Upon payment of such funds to the University of North Carolina, the Comptroller of the Currency, or any agent having such funds in charge, shall be relieved of all further liability therefor.

Upon receipt of such funds the University of North Carolina shall cause to be posted, and keep posted for thirty days, at the courthouse door of the county in which such insolvent national bank did business, a notice giving the names of the persons to whom such amounts so paid over were due, the amount thereof and the last known address of such person, and the source from which such funds were received: Provided, the Comptroller of the Currency or liquidating agent of such insolvent national bank shall furnish such information to the University of North Carolina when such funds are so paid over to it. If any person at any time thereafter shall appear and show that he is the identical person to whom any part of such fund, is due, the University of North Carolina shall pay such part in full to such person, but without any liability for interest or profits thereon.

All sums due any person or persons by reason of placing bets on any horse or dog races at any race track in this State where the placing of such bets is legal, and which have remained unclaimed and unpaid for sixty days, are hereby declared to be escheats, and the same shall be paid over to the University of North Carolina, and upon demand by the University of North Carolina information with respect thereto shall be furnished by the operators of any such race tracks. (1939, c. 22; 1947, c. 614, s. 1; c. 621, s. 2; 1953, c. 1202, ss. 1, 2; c. 1205; 1957, c. 1051.)

§ 116-26. Application of receipts. — All receipts heretofore had or hereafter to be had from escheated property or derelict property, and all interest and earnings thereon, shall be set apart by the trustees of the University so that the interest and earnings from said fund shall be used for maintenance and/or for scholarships and loan funds to worthy and needy students, residents of this State, attending the University of North Carolina, under such rules and regulations as shall be adopted by the board of trustees of the University with regard thereto.

The payment of any funds described in this chapter, or the transfer of any personal property described in this chapter, to the University of North Carolina shall relieve any person, firm, association or corporation, or any State or federal official or agency of further liability therefor. (1874-5, c. 236, s. 2; Code, s. 2630; Rev., s. 4285; C. S., s. 5787; 1947, c. 614, s. 4; 1953, c. 1202, s. 3.)

Part 2. North Carolina State University at Raleigh.

§ 116-27. Operation of North Carolina State.—The North Carolina State College of Agriculture and Engineering shall from and after March 27, 1931, be conducted and operated as part of the University of North Carolina. It shall be located at Raleigh, North Carolina, and shall be known as North Carolina State University at Raleigh. (1931, c. 202, s. 2; 1963, c. 448, s. 6; 1965, c. 213.)

Editor's Note. — The 1963 amendment substituted "North Carolina State of the University of North Carolina at Raleigh" for "the North Carolina State College of Agriculture and Engineering of the University of North Carolina" at the end of the section.

The 1965 amendment substituted "North Carolina State University at Raleigh" for "North Carolina State of the University of North Carolina at Raleigh" at the end of the section.

§§ **116-28, 116-29:** Repealed by Session Laws 1963, c. 448, s. 7.

§ **116-30. Board to accept gifts and congressional donations.** — The board of trustees shall use, as in its judgment may be proper, for the purposes of the University and for the benefit of education in agriculture and mechanic arts, as well as in furtherance of the powers and duties now or which may hereafter be conferred upon such board by law, any funds, buildings, lands, laboratories, and other property which may be in its possession. The board of trustees shall have power to accept and receive on the part of the State, property, personal, real or mixed, and any donations from the United States Congress to the several states and territories for the benefit of agricultural experiment stations or the agricultural and mechanical colleges in connection therewith, and shall expend the amount so received in accordance with the acts of the Congress in relation thereto. (1907, c. 406, s. 6; C. S., s. 5816; 1963, c. 448, s. 8.)

Editor's Note. — The 1963 amendment substituted "the University" for "such College" in the first sentence.

§ **116-31. Land scrip fund.** — The board of trustees shall own and hold the certificates of indebtedness, amounting to one hundred and twenty-five thousand dollars, issued for the principal of the land scrip fund, and the interest thereon shall be paid to them by the State Treasurer semiannually on the first day of July and January in each year for the purpose of aiding in the support of North Carolina State University at Raleigh in accordance with the act of the Congress approved July second, one thousand eight hundred and sixty-two, entitled, "An act donating public lands to several states and territories which may provide colleges for the benefit of agriculture and mechanic arts." (1907, c. 406, s. 8; C. S., s. 5817; 1963, c. 448, s. 8; 1965, c. 213.)

Editor's Note. — The 1963 amendment substituted "North Carolina State of the University of North Carolina at Raleigh" for "such College" near the middle of the section.

The 1965 amendment substituted "North Carolina State University at Raleigh" for North Carolina State of the University of North Carolina at Raleigh."

§ **116-32. Agricultural research stations.** — The agricultural research stations shall be connected with North Carolina State University at Raleigh and shall be controlled by the board of trustees. (1907, c. 406, s. 12; C. S., s. 5825; 1963, c. 448, s. 9; 1965, c. 213.)

Cross Reference.—As to agricultural research station under auspices of Board of Agriculture, see § 106-15.

Editor's Note. — The 1963 amendment rewrote this section.

The 1965 amendment substituted "North Carolina State University at Raleigh" for "North Carolina State of the University of North Carolina at Raleigh."

§ **116-33:** Repealed by Session Laws 1963, c. 448, s. 10.

§ **116-34. Joint employment by State University and State.**—Whenever it shall be to the advantage of North Carolina State University at Raleigh and any department of the State government to employ jointly any person, the board of trustees and the governing authority of the department, on the approval of the Governor, are hereby authorized to make such employment and to prorate the amount of the salary and other expenses that each shall be required to pay. (1925, c. 198, s. 2; 1963, c. 448, s. 11; 1965, c. 213.)

Editor's Note. — The 1963 amendment substituted "North Carolina State of the University of North Carolina at Raleigh" for "the North Carolina State College of Agriculture and Engineering."

The 1965 amendment substituted "North Carolina State University at Raleigh" for "North Carolina State of the University of North Carolina at Raleigh."

§ **116-35. Coordinating committee of State University and Department of Agriculture created.** — A coordinating committee is hereby created consisting of thirteen members as follows: The president of the board of trustees of the University of North Carolina, who shall be ex officio chairman of said committee, the president of the University, the chief administrative officer of North Carolina State University at Raleigh, and the dean of agriculture, the Commissioner of Agriculture, the assistant commissioner of agriculture, and the State Chemist or any other officer in the Department of Agriculture which the Commissioner of Agriculture may designate, three members of the board of trustees of the University of North Carolina who have a practical knowledge of agriculture, to be appointed by the president of the said board, and three members of the State Board of Agriculture, to be appointed by the Commissioner of Agriculture, the members so appointed to serve for a term of two years or until their successors are duly appointed. (1939, c. 255, s. 1; 1963, c. 448, s. 12; 1965, c. 213.)

Editor's Note. — The 1963 amendment substituted "chief administrative officer of North Carolina State of the University of North Carolina at Raleigh" for "dean of administration of State College of Agriculture and Engineering."

The 1965 amendment substituted "North Carolina State University at Raleigh" for "North Carolina State of the University of North Carolina at Raleigh."

§ **116-36. Duties of coordinating committee.** — It shall be the duty of the coordinating committee herein created to deal with and handle any existing matters of duplication, overlapping or disagreement, and such controversial matters as may arise in the future in the agricultural agencies of North Carolina State University at Raleigh and the Department of Agriculture. Whenever there is an overlapping or disagreement in consequence of closely allied functions and duties of the said agencies, it shall be the duty of the coordination committee to allocate, after due consideration, such duties and functions as may be in disagreement or overlapping, and that are not already allocated by law, to the proper agency as it may deem wise, and to require such cooperation between the employees in the agencies as it may deem necessary. The coordinating committee may investigate, on complaint, or on its own initiative, any overlapping, duplication or disagreement and the decision of the said committee shall be binding on all parties. (1939, c. 255, s. 2; 1963, c. 448, s. 13; 1965, c. 213.)

Editor's Note. — The 1963 amendment substituted "North Carolina State of the University of North Carolina at Raleigh" for "the State College of Agriculture and Engineering" near the end of the first sentence.

The 1965 amendment substituted "North Carolina State University at Raleigh" for "North Carolina State of the University of North Carolina at Raleigh."

§ **116-37. Findings of committee to be binding on Commissioner of Agriculture and president of University.** — The findings and recommendations of the coordinating committee shall be binding on the Commissioner of Agriculture and the president of the University of North Carolina and it shall be their duty to see that the findings and recommendations of the committee shall be put into effect in their respective departments. (1939, c. 255, s. 3.)

Part 3. The University of North Carolina at Greensboro.

§ 116-38. Operation of University of North Carolina at Greensboro.—The North Carolina College for Women shall from and after March 27, 1931, be conducted and operated as a part of the University of North Carolina. It shall be located at Greensboro, North Carolina, and shall be known as the University of North Carolina at Greensboro. (1931, c. 202, s. 3; 1943, c. 543; 1963, c. 448, s. 14.)

Editor's Note. — The 1963 amendment substituted "the University of North Carolina at Greensboro" for "the Woman's College of the University of North Carolina" at the end of the section.

Part 3A. The University of North Carolina at Charlotte.

§ 116-39. Charlotte College to become "The University of North Carolina at Charlotte". — (a) Charlotte College shall become a campus of the University of North Carolina under the designation "The University of North Carolina at Charlotte" on July 1, 1965, whereupon it shall cease to be subject to the terms of article 2, chapter 116, of the General Statutes and shall become subject to the terms of article 1, chapter 116, of the General Statutes.

(b) The board of trustees of Charlotte College shall, on or before July 1, 1965, execute proper legal instruments conveying to the University of North Carolina, without consideration, all right, title, and interest of the grantor in and to the real and personal property of Charlotte College, including all endowments, executory contracts, and unexpended State appropriations. Mecklenburg County shall continue to be solely liable for the repayment of all indebtedness incurred by that county in aid of Charlotte College. (1965, c. 31, s. 2.)

Editor's Note. — A former § 116-39, which was repealed by Session Laws 1963, c. 448, s. 15, related to the Woman's College of the University of North Carolina. The repealed section derived from Public Laws 1919, c. 199.

§§ 116-40, 116-41: Repealed by Session Laws 1963, c. 448, s. 15.

Part 4. Revenue Bonds for Service and Auxiliary Facilities.

§ 116-41.1. Definitions.—As used in this part:

(1) "Board" means the board of trustees of the University of North Carolina;

(2) "Construction" means acquisition, construction, provision, reconstruction, replacement, extension, improvement or betterment, or any combination thereof;

(3) "Cost," as applied to a project, shall include the cost of construction (as herein defined), the cost of all labor, materials and equipment, the cost of all lands, property, rights and easements acquired, financing charges, interest prior to and during construction and, if deemed advisable by the board, for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and/or revenues, cost of engineering and legal services, and all other expenses necessary or incident to such construction, administrative expense and such other expenses, including reasonable provisions for initial operating expenses necessary or incident to the financing herein authorized, and any expense incurred by the board in the issuance of bonds under the provisions of this part in connection with any of the foregoing items of cost;

(4) "Project" means any undertaking under this part to acquire, construct or provide at the University of North Carolina at Chapel Hill, North Carolina, service and auxiliary facilities necessary or desirable for the

students or staff or in the operation of the University, either as additions, extensions, improvements or betterments to the University Enterprises or otherwise, including one or more or any combination of any system, facility, plant, works, instrumentality or other property used or useful:

a. In obtaining, conserving, treating or distributing water for domestic, industrial, sanitation, fire protection or any other public or private use;
b. For the collection, treatment, purification or disposal of sewage, refuse or wastes;
c. For the production, generation, transmission or distribution of gas, electricity or heat;
d. In providing communication facilities including telephone facilities;
e. In providing storage, service, repair and duplicating facilities;
f. In improving, extending or adding to the University Enterprises as herein defined; and
g. In providing other service and auxiliary facilities serving the needs of the students, the staff or the physical plant of the University; and including all plants, works, appurtenances, machinery, equipment and properties, both personal and real, used or useful in connection therewith;

(5) "Revenue bonds" or "bonds" means bonds of the University issued by the board to pay the cost, in whole or in part, of any project pursuant to this part and the bond resolution or resolutions of the board; provided, however, that bonds, issued as a separate series which are stated to mature not later than twenty years from their date may be designated "revenue notes" or "notes";

(6) "Revenues" means the income and receipts derived by or for the account of the University through the charging and collection of service charges;

(7) "Service charges" means rates, fees, rentals or other charges for, or for the right to, the use, occupancy, services or commodities of or furnished by any project, or by any other service or auxiliary facility of the University, including the University Enterprises, any part of the income of which is pledged to the payment of the bonds or the interest thereon;

(8) "University" means the body politic and corporate known and distinguished by the corporate name of the "University of North Carolina" under § 116-3 of the General Statutes;

(9) "University Enterprises" means the following existing facilities, systems, properties, plants, works and instrumentalities located in or near the town of Chapel Hill, North Carolina, presently in the jurisdiction of and operated by the University; the telephone, electric, heating and water systems, the laundry, Carolina Inn, service and repair shops, the duplicating shop, book stores and student supply stores, and rental housing properties for faculty members. (1961, c. 1078, s. 1; 1963, c. 448, s. 16; c. 944, s. 1; 1965, c. 1033, s. 1.)

Cross Reference.—As to revenue bonds for student housing, see §§ 116-175 to 116-185.

Editor's Note.—The first 1963 amendment substituted "at" for "in" preceding the words "Chapel Hill" near the beginning of subdivision (4).

The second 1963 amendment substituted "twenty" for "five" near the end of subdivision (5).

The 1965 amendment substituted "town of Chapel Hill" for "city of Chapel Hill" in subdivision (9) and deleted "storerooms" from, and added "book stores and student supply stores" to, the list of facilities in that subdivision.

§ **116-41.2. Powers of board of trustees generally.**—In addition to the powers which the board now has, the board shall have the following powers subject to the provisions of this part and subject to agreements with the holders of any revenue bonds issued hereunder:

(1) To acquire by gift, purchase or the exercise of the power of eminent domain or to construct, provide, improve, maintain and operate any project or projects;

(2) To borrow money for the construction of any project or projects, and to issue revenue bonds therefor in the name of the University;

(3) To establish, maintain, revise, charge and collect such service charges (free of any control or regulation by any State regulatory body) as will produce sufficient revenues to pay the principal of and interest on the bonds and otherwise to meet the requirements of the resolution or resolutions of the board authorizing the issuance of the revenue bonds;

(4) To pledge to the payment of any bonds of the University issued hereunder and the interest thereon the revenues of the project financed in whole or in part with the proceeds of such bonds, and to pledge to the payment of such bonds and interest any other revenues, subject to any prior pledge or encumbrance thereof;

(5) To appropriate, apply, or expend in payment of the cost of the project the proceeds of the revenue bonds issued for the project;

(6) To sell, furnish, distribute, rent, or permit, as the case may be, the use, occupancy, services, facilities and commodities of or furnished by any project or any system, facility, plant, works, instrumentalities or properties whose revenues are pledged in whole or in part for the payment of the bonds, and to sell, exchange, transfer, assign or otherwise dispose of any project or any of the University Enterprises or any other service or auxiliary facility or any part of any thereof or interest therein determined by resolution of the board not to be required for any public purpose by the board;

(7) To retain and employ consultants and other persons on a contract basis for rendering professional, technical or financial assistance and advice in undertaking and carrying out any project and in operating, repairing or maintaining any project or any system, facility, plant, works, instrumentalities or properties whose revenues are pledged in whole or in part for the payment of the bonds; and

(8) To enter into and carry out contracts with the United States of America or this State or any municipality, county or other public corporation and to lease property to or from any person, firm or corporation, private or public, in connection with exercising the powers vested under this part. (1961, c. 1078, s. 2.)

§ **116-41.3. University authorized to pay service charges; payments deemed revenues.**—The University is hereby authorized to pay service charges for, or for the right to, the use, occupancy, services or commodities of or furnished by any project or by any other service or auxiliary facility of the University, including the University Enterprises, and the income and receipts derived from such service charges paid by the University shall be deemed to be revenues under the provisions of this part and shall be applied and accounted for in the same manner as other revenues. (1961, c. 1078, s. 3.)

§ **116-41.4. Bonds authorized; amount limited; form, execution and sale; terms and conditions; use of proceeds; additional bonds; interim receipts or temporary bonds; replacement of lost, etc., bonds; approval or consent for issuance; bonds not debt of State.**—The board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bonds of the University for the purpose of undertaking and carrying out any project or projects hereunder; provided, however, that the aggregate principal amount of revenue bonds which the board is authorized to issue under this section during the biennium ending June 30, 1967, shall not exceed three million five hundred thousand dollars ($3,500,000). The bonds shall be dated, shall mature at such time or times not exceeding thirty years from their date or dates, and shall bear interest at such rate or rates not exceeding six per centum (6%) per annum, as may be determined by the board, and may be made redeemable before maturity at the option of the board at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the bonds. The board shall determine the form and manner of execution of the bonds, and any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this part or any recitals in any bonds issued under the provisions of this part, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the University, but no sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than six per centum (6%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the board may provide in the resolution authorizing the issuance of such bonds. Unless otherwise provided in the authorizing resolution, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds may also contain such limitations upon the issuance of additional revenue bonds as the board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution.

Prior to the preparation of definitive bonds, the board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued by the board under the provisions of this part, subject to the approval of the Advisory Budget Commission, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this part.

Revenue bonds issued under the provisions of this part shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds. (1961, c. 1078, s. 4; 1963, c. 944, s. 2; 1965, c. 1033, s. 2.)

Editor's Note. — The 1963 amendment substituted "1965" for "1963" near the end of the first sentence.

The 1965 amendment substituted "1967" for "1965" near the end of the first sentence and substituted "three million five hundred thousand dollars ($3,500,000)" for "two million five hundred thousand dollars ($2,500,000)" at the end of that sentence.

§ 116-41.5. Contents of resolution authorizing issuance; powers liberally construed; deposit and use of revenues; rights and remedies of bondholders; service charges; insurance of projects; depositaries. —The board in the resolution authorizing the issuance of bonds under this part may provide for a pledge to the payment of such revenue bonds and the interest thereon of the revenue derived from the project and also for a pledge of the revenues derived from any system, facility, plant, works, instrumentalities or properties improved, bettered, or extended by the project or otherwise within the jurisdiction of or operated by the University in connection with the University of North Carolina at Chapel Hill, North Carolina, the revenues derived from any future improvements, betterments or extensions of the project, the revenues derived from the University Enterprises, or any part thereof, or the revenues from the project and any or all of the revenues mentioned in this sentence, without regard to whether the operations involved are deemed governmental or proprietary, it being the purpose hereof to vest in the board broad powers which shall be liberally construed. So long as any revenues of the University mentioned in this paragraph are pledged for the payment of the principal of or interest on any bonds issued hereunder, such revenues shall be deposited in a special fund and shall be applied and used only as provided in the resolution authorizing such bonds, subject, however, to any prior pledge or encumbrance thereof.

The resolution authorizing the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the holders of the bonds, including covenants setting forth the duties of the University in relation to the construction of any project to be financed with the proceeds of said bonds, and to the maintenance, repair, operation and insurance of such project or any other project, systems, facilities, plants, works, instrumentalities, properties, the University Enterprises or any part thereof, if the revenues thereof are in any way pledged as security for the bonds; the fixing and revising of service charges and the collection thereof; and the custody, safeguarding and application of all moneys of the University pertaining to the project and the bonds, and all revenues pledged therefor. Notwithstanding the provisions of any other law, the board may carry insurance on any such project in such amounts and covering such risks as it may deem advisable. It shall be lawful for any bank or trust company incorporated under the laws of the State of North Carolina which may act as depositary of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the board. Such resolution may set forth the rights and remedies of the bondholders and may restrict the individual right of action by bondholders. Such resolution may contain such other provisions in addition to the foregoing as the board may deem reasonable and proper for the security of the bondholders.

The board may provide for the payment of the proceeds of the bonds and any revenues pledged therefor to such officer, board or depositary as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out the provisions of such resolution may be treated as a part of the cost of operation. (1961, c. 1078, s. 5.)

§ **116-41.6. Pledge of revenues; lien.**—All pledges of revenues under the provisions of this part shall be valid and binding from the time such pledges are made. All such revenues so pledged shall immediately upon receipt thereof be subject to the lien of such pledge without any physical delivery thereof or further action, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the University, irrespective of whether such parties have notice thereof. (1961, c. 1078, s. 6.)

§ **116-41.7. Proceeds of bonds, revenues, etc., deemed trust funds.**—The proceeds of all bonds issued and all revenues and other moneys received pursuant to the authority of this part shall be deemed to be trust funds, to be held and applied solely as provided in this part. The resolution authorizing the issuance of bonds shall provide that any officer to whom, or bank, trust company or fiscal agent to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as such resolution may provide. (1961, c. 1078, s. 7.)

§ **116-41.8. Rights and remedies of bondholders.**—Any holder of revenue bonds issued under the provisions of this part or of any of the coupons appertaining thereto, except to the extent that the rights herein given may be restricted by the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State of North Carolina, including this part, or under such resolution, and may enforce and compel the performance of all duties required by this part or by such resolution to be performed by the University or by any officer thereof or the board, including the fixing, charging and collecting of service charges. (1961, c. 1078, s. 8.)

§ **116-41.9. Refunding revenue bonds.**—The University is hereby authorized, subject to the approval of the Advisory Budget Commission, to issue from time to time refunding revenue bonds for the purpose of refunding any revenue bonds issued by the University under this part in connection with any project or projects, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The University is further authorized, subject to the approval of the Advisory Budget Commission, to issue from time to time refunding revenue bonds for the combined purpose of

(1) Refunding any revenue bonds or refunding revenue bonds issued by the University in connection with any project or projects including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and

(2) Paying all or any part of the cost of any project or projects.

The issuance of such refunding revenue bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the University with respect to the same, shall be governed by the foregoing provisions of this part insofar as the same may be applicable. (1961, c. 1078, s. 9.)

§ **116-41.10. Exemption from taxation.**—The bonds issued under the provisions of this part and the income therefrom shall at all times be free from taxation within the State. (1961, c. 1078, s. 10.)

§ 116-41.11. Executive committee may be authorized to exercise powers and functions of board.—The board by resolution may authorize its executive committee to exercise or perform any of the powers or functions vested in the board under this part. (1961, c. 1078, s. 11.)

§ 116-41.12. Part provides supplemental and additional powers; compliance with other laws not required.—This part shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of revenue bonds or refunding revenue bonds under the provisions of this part need not comply with the requirements of any other law applicable to the issuance of bonds and provided, further, that all general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this part. (1961, c. 1078, s. 12.)

Part 5. Miscellaneous Provisions.

§ 116-42. License for operating billiard tables, etc., to be approved by president of University.—No person, firm or corporation shall apply for or receive from the governing body, or the representative of such governing body, of any county or incorporated city or town, any license or authorization to set up, maintain or keep in Chapel Hill, or within five miles thereof, any public billiard table or other public table of any kind, by whatever name called, at which games of chance or skill may be played, without first obtaining written permission therefor from the president of the University of North Carolina. Nor shall any person, firm or corporation apply for or receive a license from any such governing body, or the representative thereof, to keep, maintain or operate within the town of Chapel Hill or within five miles of the boundaries thereof, any house, place or establishment wherein ten pin alleys, bowling alleys, or other games of chance or skill shall be operated or conducted without first obtaining written permission therefor from the president of the University of North Carolina. (1794, c. 429, P. R.; R. S., c. 116, s. 4; R. C., c. 113, s. 5; Code, s. 2644; Rev., s. 4278; C. S., s. 5802; 1931, c. 41.)

§ 116-43. License for exhibiting any form of amusements and entertainments to be approved by president of University.—No person, firm or corporation shall apply for or obtain from the governing body, or the representative of such governing body, of any county or incorporated city or town any license or permit to exhibit within the town of Chapel Hill or within five miles thereof any theatrical, sleight of hand, esquestrian performance, or any dramatic recitation, or any rope or wire dancing, natural or artificial curiosities, or any concert, serenade or performance in music, singing or dancing, without first securing a written permission for said performance from the president of the University of North Carolina. A copy of the president's permission shall be filed with the governing body, or the representative of such governing body, of any county or incorporated city or town at the time said license or permit is applied for in all cases covered by this section. (1824, c. 1252, P. R.; R. S., c. 116, s. 3; R. C., c. 113, s. 6; Code, s. 2645; Rev., s. 4279; C. S., s. 5803; 1931, c. 41; 1953, c. 675, s. 13.)

§ 116-44. Violation of two preceding sections; misdemeanor; jurisdiction; participant must testify.—Any person violating §§ 116-42 or 116-43 shall be guilty of a misdemeanor, and fined not less than ten dollars nor more than fifty dollars, or be imprisoned not less than ten days nor more than thirty days; and if the offender is not brought to trial before some justice of the peace within twelve months after the commission of the offense, the superior court in term for the county in which the offense was committed may take jurisdiction of the same and punish the offender at the discretion of the court. No person shall be excused or incapacitated from testifying touching the violation of any of the two next preceding sections by reason of his having been a participant in the offenses; but the testimony of such person shall not be used against him in any criminal prosecution on account of such participation. (R. C., c. 113, s. 7; 1879, c. 232, s. 3; Code, s. 2646; Rev., s. 4280; C.S., s. 5804.)

§ 116-44.1. Motor vehicle laws applicable to streets, alleys and driveways on campuses of the University of North Carolina; University trustees authorized to adopt traffic regulations.—(a) All the provisions of chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the campuses of the University of North Carolina. Any person violating any of the provisions of said chapter in or on such streets, alleys or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on the campuses of the University of North Carolina as is now vested by law in the trustees of the University of North Carolina.

(b) The board of trustees of the University of North Carolina is authorized to make such additional rules and regulations and adopt such additional ordinances with respect to the use of the streets, alleys, driveways, and to the establishment of parking areas on such campuses not inconsistent with the provisions of chapter 20, General Statutes of North Carolina, as in its opinion may be necessary. All regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the board and printed, and copies of such regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Any person violating any such regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor, and shall be punishable by a fine of not exceeding fifty dollars ($50.00) or imprisonment for not exceeding 30 days.

(c) The board of trustees of the University of North Carolina shall cause to be posted at appropriate places on the campuses of the University notice to the public of applicable speed limits and parking laws and ordinances. (1947, c. 1070.)

§ 116-44.2. Child development research and demonstration center.—(a) The Chapel Hill city board of education is authorized to enter into long-term agreements and contracts with the University of North Carolina for the purpose of providing for the establishment and operation of a child development research and demonstration center. The board is additionally authorized to lease or transfer title to real and personal property, including buildings and equipment, with or without compensation, to the University for this purpose.

(b) If an elementary school meeting the requirements for accreditation established by the State Board of Education is operated in conjunction with the center such school shall receive financial support through the Chapel Hill city board of education from State, county, and administrative unit sources on the same basis as the other elementary schools in the Chapel Hill city administrative unit.

(c) All personnel of the center whose salaries are paid in whole or part from funds administered by the State Board of Education or the Chapel Hill city board of education, from whatever sources derived, shall be employed only upon the mutual concurrence of the superintendent of the Chapel Hill city administrative unit and the director of the center. (1965, c. 690.)

Article 2.

Western Carolina College, East Carolina College, Appalachian State Teachers College, Pembroke State College, Agricultural and Technical College of North Carolina, North Carolina College of Durham, Elizabeth City State College, Fayetteville State College, Winston-Salem State College, Asheville-Biltmore College, Wilmington College.

§ **116-45. Primary purpose of named institutions.**—The primary purpose of the several institutions hereinafter named shall be as follows:

(1) The primary purpose of Western Carolina College, East Carolina College, and Appalachian State Teachers College shall be the preparation of young men and women as teachers, supervisors, and administrators for the public schools of North Carolina, including the preparation of such persons for the master's degree. Said institutions may also offer instruction in the liberal arts and sciences including the preparation for the master's degree, and such other programs as are deemed necessary to meet the needs of its constituency and of the State and as shall be approved by the North Carolina Board of Higher Education, consistent with appropriations made therefor.

(2) The primary purpose of Pembroke State College shall be the undergraduate education of the Lumbee Indians and other persons who may be admitted under uniform regulations of the board of trustees. The educational program of the institution shall be subject to the approval of the North Carolina Board of Higher Education, consistent with the appropriations made therefor.

(3) The primary purpose of North Carolina College at Durham shall be undergraduate instruction in the liberal arts and sciences, the training of teachers, supervisors, and administrators for the public schools of the State, and such graduate and professional instruction as shall be approved by the North Carolina Board of Higher Education, consistent with the appropriations made therefor.

(4) The primary purpose of the Agricultural and Technical College of North Carolina shall be to teach the agricultural and technical arts and sciences and such branches of learning as relate thereto; the training of teachers, supervisors, and administrators for the public schools of the State, including the preparation of such teachers, supervisors and administrators for the master's degree. Such other programs of a professional or occupational nature may be offered as shall be approved by the North Carolina Board of Higher Education, consistent with the appropriations made therefor.

(5) The primary purpose of Elizabeth City State College, Fayetteville State College, and Winston-Salem State College shall be the undergraduate preparation of young men and women for teaching in the public schools of the State. Such other programs may be offered as shall be approved by the North Carolina Board of Higher Education, consistent with the appropriations made therefor.

(6) The primary purpose of Asheville-Biltmore College and Wilmington College shall be to provide undergraduate instruction in the liberal arts and sciences, the training of teachers, and such graduate, professional, and other undergraduate programs as are deemed necessary to meet the needs of the constituencies and of the State and as shall be approved by the North Carolina Board of Higher Education, consistent with appropriations provided therefor. (1957, c. 1142; 1963, cc. 421, 422; c. 448, s. 21; c. 507; 1965, c. 31, s. 3; c. 1096, s. 6½.)

Editor's Note. — Session Laws 1957, c. 1142, repealed former articles 2 through 9, containing §§ 116-45 through 116-104, and substituted this new article 2 in lieu thereof. Section 2 of said chapter provides: "Nothing herein contained shall be taken as repealing or altering any section of G.S. 116-154 through G.S. 116-167; and in the event of any conflict between the provisions of this act and G.S. 116-154 through G.S. 116-167, inclusive, the latter shall control."

Present articles 3 through 5, containing §§ 116-47 through 116-74, derived from Session Laws 1957, c. 1098; 1961, c. 1099; 1963, c. 448, s. 25; c. 1116; 1965, c. 688; c. 1148, s. 1.

Session Laws 1963, c. 421, changed the name of "Winston-Salem Teachers College" to "Winston-Salem State College." Pursuant to Session Laws 1963, c. 422, codified as § 116-45.1, the name of "Elizabeth City State Teachers College" has been changed to "Elizabeth City State College." Session Laws 1963, c. 448, s. 21, added subdivision (6). Session Laws 1963, c. 507, changed the name of "Fayetteville State Teachers College" to "Fayetteville State College."

The first 1965 amendment deleted "Charlotte College" from subdivision (6).

The second 1965 amendment deleted "undergraduate" following "offer" near the beginning of the last sentence of subdivision (1), and inserted "including the preparation for the master's degree" following "sciences" in that sentence.

As to law-enforcement officers for duty on campus of Western Carolina College, see Session Laws 1959, c. 42.

§ 116-45.1. Change of name of Elizabeth City State Teachers College to Elizabeth City State College.—Where the words "Elizabeth City State Teachers College" appear in any general, local or special act, the same shall be stricken out and the words "Elizabeth City State College" inserted in lieu thereof. (1963, c. 422.)

§ 116-45.2. Conversion of Asheville-Biltmore College and Wilmington College from junior to senior colleges.—(a) Asheville-Biltmore College and Wilmington College shall become public senior colleges on July 1, 1963, and thereupon they shall cease to be subject to the terms of the Community College Act (General Statutes, chapter 116, article 3) and shall become subject to the terms of the State Colleges Act (General Statutes, chapter 116, article 2). The addition of the third and fourth years of study shall, in each case, be made as promptly as is consistent with sound educational considerations, and in conformity with schedules which shall be prepared by the boards of trustees of the respective colleges and approved by the Board of Higher Education.

(b) On July 1, 1963, or as soon thereafter as is practicable, the Governor shall appoint new boards of trustees for Asheville-Biltmore College and for Wilmington College, in the numbers and for the terms specified in G.S. 116-46. The initial appointments to those three boards shall not be subject to confirmation by the General Assembly. On the earliest practicable date after their appointment, the members of the respective new boards of trustees shall convene on call of the Governor and proceed to organize.

(c) The existing board of trustees of Asheville-Biltmore College and the existing board of trustees of Wilmington College respectively shall, prior to July 1, 1963, execute proper legal instruments conveying to the new board of trustees of Asheville-Biltmore College and the new board of trustees of Wilmington College respectively, without consideration, all right, title, and interest of the grantors in and to the property, both real and personal, of Asheville-Biltmore College and Wilmington College respectively, including all endowments, executory contracts, and unexpended State appropriations. Such conveyances shall take effect upon the appointments and organization of the respective new board of trustees. Upon their organization, the respective new boards of trustees shall accept formally the conveyance of such properties. The counties of Buncombe and New Hanover respectively shall continue to be solely liable for the repayment of all indebtedness incurred in aid of Asheville-Biltmore College and Wilmington College respectively. Provided, however, that funds heretofore appropriated to the Department of Administration under the provisions of article 3 of chapter 116 of the General Statutes, to be allocated to Asheville-Biltmore College and Wilmington College as matching funds for capital improvements in accordance with the provisions of G.S. 116-53 (b), which appropriated funds remain unexpended by reason of their not having been matched by local funds, shall not revert to the general fund until June 30, 1964, and may be allocated by the Advisory Budget Commission to Asheville-Biltmore College and Wilmington College prior to that date.

(d) The boards of commissioners of Buncombe County and New Hanover County respectively are authorized to continue to provide local financial support for the first two (2) years or junior college program of Asheville-Biltmore College and Wilmington College respectively for the fiscal years beginning July 1, 1963 and July 1, 1964, by levying a special tax to a maximum annual rate equal to the maximum annual rate last approved by the voters of those counties respectively for the support of Asheville-Biltmore College and Wilmington College, or by appropriations from nontax revenue, or by both. Beginning not later than July 1, 1965, Asheville-Biltmore College and Wilmington College shall be financed in accordance with the Executive Budget Act (General Statutes, chapter 143, article 1). (1963, c. 448, s. 22; c. 956; 1965, c. 31, s. 3.)

Editor's Note. — The 1963 amendment added the proviso to subsection (c).

The 1965 amendment deleted all references to Charlotte College in subsections (a), (b) and (c), deleted "the board of trustees of the Charlotte Community College system" following "Asheville-Biltmore College" near the beginning of subsection (c), and deleted "Mecklenburg" following "Buncombe" in the fourth sentence of subsection (c).

§ **116-46. Provisions common to all named institutions.**—The following provisions shall be common to all the institutions hereinbefore named:

(1) Members of Board of Trustees; Number, Terms and Appointment.
  a. The board of trustees of the institution shall consist of twelve persons appointed for terms of eight years each, beginning July 1 of an odd-numbered year, the terms to be staggered so that three vacancies occur every two years.
  b. Members of the present board of trustees of each of said institutions shall serve out their respective terms and until the next succeeding July 1. At the expiration of their present terms, as thus extended, new appointments to the board of trustees of each of said institutions shall be made so as to provide a board of trustees of twelve members appointed for terms of eight years each, the terms to be staggered so that three vacancies shall occur every two years.
  c. In the case of the Agricultural and Technical College of North Carolina, which has at present more than twelve trustees, vacancies as they occur shall not be filled until the board of trustees shall be reduced to the required number of twelve members as herein provided.
  d. The Governor shall make all appointments to each of said boards of trustees, subject to the confirmation of the General Assembly in joint session assembled.

(2) Removal of Trustees; When Position Deemed Vacant.
  a. Members of each board of trustees shall be subject to removal for cause by the Governor and Council of State.
  b. Whenever a trustee shall fail to be present for two successive regular meetings of the board of trustees, without just cause as determined by the board, his position as trustee shall be deemed vacant, and said vacancy shall be filled as herein provided.

(3) Meetings of Board.—It shall be the duty of each of said boards of

trustees to hold not less than two regular meetings a year as fixed by the trustees, at which the board shall consider recommendations of the president of the institution, and transact such other business as may properly come before it. The board of trustees may also hold special meetings from time to time upon the call of the chairman of the board.

(4) Election of Chairman and Vice-Chairman; Committees of Board; Quorum; Majority Vote.—At the first meeting after June 30 of each year, the board of trustees shall elect one of their own members as chairman and one as vice-chairman, and designate such committees of the board, and endow them with such powers, as may be deemed proper and wise for the management of the affairs of the institution. The chairman shall appoint the committees so designated. A quorum of the board of trustees for the transaction of business shall consist of a majority of the members of the board. All actions of the board of trustees shall be taken by a majority vote, a quorum being present.

(5) Board a Body Corporate and Agency of State; Title to Property; Management of Institution.

a. The board of trustees of each of said institutions is hereby constituted a body corporate and an agency of the State of North Carolina under the name and style of "The Board of Trustees of ...." (in which shall be inserted the name of the institution) and by that name may sue and be sued, make contracts, acquire real and personal property by gift, purchase, or devise, and exercise such other rights and privileges as are ordinarily exercised by corporations of like character and as are necessary for the proper administration of the affairs of said institution.

b. The board of trustees of each of said institutions and its successors in office shall hold in trust for the State of North Carolina title to all property now held, or which shall be later acquired by said board.

c. The board of trustees of each of said institutions shall be responsible for the management of all the affairs of the institution, subject to the applicable laws of the State of North Carolina, and shall have the duty to provide for the handling and expenditure of all moneys whatsoever belonging to, appropriated to, or in any way acquired by the institution; it shall provide for the erection of all buildings, the making of all needed improvements, the maintenance of the physical plant of said institution, and may do all things deemed useful and wise for the good of the institution. Institutions operating electric power plants and distribution systems as of June 6, 1957 are authorized to continue such operation and, after furnishing light and power to the institution, to sell any excess current to the people of the community at a rate or rates approved by the Utilities Commission. Any net profits derived from the operation of such power plants and distribution systems shall be paid into the endowment fund of the institution authorized under G.S. 116-46 (7).

d. It shall be the duty of each of said boards of trustees to elect a president of the institution and to fix his salary within the schedule provided by law, and to fix his tenure of office. Upon the recommendation of the president, it shall be the duty of the board of trustees to elect other officers, teachers, and employees, to fix their duties, tenure of office, and within the schedule provided by law, their salaries. The board of trustees shall also establish bylaws for the management of the institution's affairs, and rules and regulations for the general management of the institution, and the discipline of the students.

e. The board of trustees of each of said institutions, upon the recommendation of the faculty, is hereby authorized and empowered to confer or cause to be conferred such degrees as are usually conferred by similar institutions, subject to the authority of the North Carolina Board of Higher Education to determine and approve the kinds of degrees to be conferred by the institution.

f. Each of said institutions now operating a campus laboratory or demonstration school may continue to do so under the now existing plan of operation, consistent with the appropriations made therefor.

(6) Duties of President of Institution.

a. It shall be the duty of the president of each of said institutions to attend all meetings of the board of trustees, to be responsible for the keeping of a full and complete record of such meetings, and to act as custodian of all records, deeds, contracts, and the like. It shall be the duty of the president to keep the board of trustees fully informed of the operations of the institution and its needs.

b. Whenever the term of office of any member of the board of trustees of such institutions is about to expire, or should a vacancy occur for any cause, the president, with the approval of the chairman of the board of trustees, shall immediately notify the Governor, to the end that he may make an appointment to fill such vacancy.

c. The president shall be the administrative and executive head of the institution, and shall not be a member of the board of trustees. He shall prepare annually for the board of trustees a detailed report of the operations of the institution for the preceding year and cause one copy thereof to be filed with the official records of the board of trustees and one copy to be filed with the North Carolina Board of Higher Education.

d. The president of the institution shall recommend courses of study, subject to the approval of the board of trustees, and further subject to the authority of the North Carolina Board of Higher Education to determine the major functions and activities of State supported institutions of higher education.

(7) Endowment Fund.

a. Each of said boards of trustees is hereby authorized to establish a permanent endowment fund.

b. Such board of trustees shall appoint an investment committee, to be known as "The Board of Trustees of the Endowment Fund of the .... College," (in which shall be inserted the name of the institution) which board of trustees of the endowment fund is hereby created as an agency of the board of trustees of the college to do the specific things hereinafter enumerated. The board of trustees of the endowment fund shall consist of five members, including the chairman of the board of trustees, the president of the college, and three other persons, not necessarily members of the board of trustees of the college, to be chosen by the board of trustees of said college.

c. The chairman of the board of trustees of the college shall be the chairman of the board of trustees of the endowment fund.

d. The trustees of said endowment fund may receive gifts, donations, and bequests, may in their discretion retain such in the form in which they are made, and may use the same as a permanent endowment fund. Said trustees may retain in such permanent endowment fund any other moneys or securities of any kind that may come to them from the board of trustees of the college or that may come to the trustees of the endowment fund, excepting always the moneys received from State appropriations, and from tuition, fees, and the like, collected from students and used for the general operation of the college. The trustees of the endowment fund shall have power to sell any property, real or personal, of the fund, at either public or private sale.

e. The trustees of the endowment fund shall be responsible for the prudent investment of the fund, in the exercise of their sound discretion, without regard to any statute or rule of law relating to the investment of funds by fiduciaries.

f. The principal of said endowment fund shall be kept intact and only the income therefrom may be expended. The trustees of the endowment fund shall determine what is income and what is principal.

g. It is not the intent that the income from such endowment fund shall take the place of State appropriations or any part thereof but that it shall supplement the State appropriations to the end that the institution may improve and increase its functions, may enlarge its areas of service and may become more useful to a greater number of people. All expenditures of moneys from the endowment fund shall in all cases be approved by the board of trustees of the institution and expended under the board's direction. Funds from the endowment fund shall not be expended for a purpose which will impose a financial burden on the State of North Carolina without first securing the approval of the North Carolina Board of Higher Education and the Advisory Budget Commission.

h. The board of trustees of the institution shall establish standards for such scholarships as may be awarded from proceeds of said endowment fund and may change or alter such standards from time to time.

i. Nothing in this section shall be construed to prevent the trustees of the endowment fund from receiving gifts, donations and bequests and from using the same for such lawful purposes as the donor or donors designate, subject always to the approval of the board of trustees of the institution, and subject, further, to the approval of the North Carolina Board of Higher Education and the Advisory Budget Commission if the expenditure of funds would impose a financial burden on the State of North Carolina. (1957, c. 1142.)

§ 116-46.1. Motor vehicle laws applicable to streets, alleys and driveways on campus of Appalachian State Teachers College; college trustees authorized to adopt traffic regulations.—(a) All the provisions of chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the campus of the Appalachian State Teachers College. Any person violating any of the provisions of said chapter in or on such streets, alleys or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on the campus of Appalachian State Teachers College as is now vested by law in the trustees of Appalachian State Teachers College or town of Boone.

(b) The board of trustees of Appalachian State Teachers College is authorized to make such additional rules and regulations and adopt such additional ordinances with respect to the use of the streets, alleys, driveways, and to the establishment of parking areas on such campus not inconsistent with the provisions of chapter 20, General Statutes of North Carolina, and the ordinances of the town of Boone, as in its opinion may be necessary. All regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the board and printed, and copies of such regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Any person violating any such regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor, and shall be punishable by a fine of not exceeding fifty dollars ($50.00) or imprisonment for not exceeding 30 days.

(c) The board of trustees of Appalachian State Teachers College shall cause to be posted at appropriate places on the campus of Appalachian State Teachers College notice to the public of applicable speed limits and parking laws and ordinances. (1961, c. 563.)

§ 116-46.2. Purchase of annuity or retirement income contracts for faculty members, officers and employees.—Notwithstanding any provision of law relating to salaries and/or salary schedules for the pay of faculty members, administrative officers, or any other employees of universities, colleges and institutions of higher learning as named and set forth in articles 1 and 2 of chapter 116 of the General Statutes, as amended, and other State agencies qualified as educational institutions under § 501(c) (3) of the United States Internal Revenue Code, the board of trustees of any such universities, colleges and institutions of higher learning may authorize the business officer or agent of same to enter into annual contracts with any of the faculty members, administrative officers and employees of said institutions of higher learning which provide for a reduction in salary below the total established compensation or salary schedule for a term of one (1) year. The financial officer or agent shall use the funds derived from the reduction in the salary of the faculty member, administrative officer or employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said faculty member, administrative officer or employee of said universities, colleges and institutions of higher learning. A faculty member, administrative officer or employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the faculty member, administrative officer or employee before his election for a salary reduction has become effective. The agreement for salary reductions referred to herein shall be effected under any necessary regulations and procedures adopted by the various boards of trustees of the various institutions of higher learning and on forms prepared by said boards of trustees. Notwithstanding any other provision of this section or law, the amount by which the salary of any faculty member, administrative officer or employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes. (1965, c. 365.)

§ **116-46.3. Participation in sixth-year program of graduate instruction for superintendents, assistant superintendents, and principals of public schools.**—Notwithstanding any other provision of law or the regulations of any administrative agency the educational institutions of East Carolina College, North Carolina College of Durham, Appalachian State Teachers College, and Western Carolina College, are hereby authorized and shall be eligible colleges to participate in the sixth-year program adopted by the State Board of Education February 4, 1965, to provide a minimum of 60 semester hours of approved graduate, planned, nonduplicating instruction not beyond the masters degree for the education of superintendents, assistant superitendents, and principals of public schools. The satisfactory completion of such program and instruction shall qualify a person for the same certificate and stipend as now provided for other eligible educational institutions. (1965, c. 632.)

§ **116-46.4. School of medicine authorized at East Carolina College; meeting requirements of accrediting agencies.**—The board of trustees of East Carolina College is hereby authorized to create a school of medicine at East Carolina College, Greenville, North Carolina.

The school of medicine shall meet all requirements and regulations of the Council on Medical Education and Hospitals of the American Medical Association, The Association of American Medical Colleges, and other such accrediting agencies whose approval is normally required for the establishment and operation of a two-year medical school. (1965, c. 986, ss. 1, 2.)

Editor's Note.—Section 4 of the act inserting this section provides that if the conditions imposed by ss. 3 and 4 of the act (as to appropriations) have not been met by Jan. 1, 1967, and accreditation granted, the Board of Higher Education shall study the proposal for an East Carolina College medical school and first give its approval before the college continues or implements a program for a two- or four-year school of medicine.

Article 3.

Community Colleges.

§ **116-47. Short title.**—This article shall be known as "The Community College Act." (1957, c. 1098, s. 1.)

Cross Reference.—See Editor's Note to § 116-45.

Applied in Wynn v. Trustees of Charlotte Community College Sys., 255 N.C. 594, 122 S.E.2d 404 (1961).

§ **116-48. Purpose.**—The purpose of this article is to provide a plan of organization and operation for community colleges, to serve as a legislative charter for such colleges, and to authorize the levy of taxes and issuance locally of bonds for the support thereof. Provided, no additional community colleges shall be organized or operated pursuant to the provisions of this article after the effective date of chapter 115A of the General Statutes of North Carolina, "Community Colleges, Technical Institutes, and Industrial Education Centers." (1957, c. 1098, s. 2; 1963, c. 448, s. 25.)

Editor's Note. — The 1963 amendment added the proviso.

Chapter 115A of the General Statutes became effective July 1, 1963.

§ **116-49. Definitions.**—As used herein:

(1) The term "community college" is defined to be an educational institution
  a. Dedicated primarily to the particular needs of a community or an area,
  b. Offering the freshman and sophomore courses of a college of arts and sciences and/or the first or first and second year courses of a two-year technical institute of college grade, and

c. Organized and operating under the provisions of this article.

In addition to the courses above referred to, such college may also offer a variety of occupational, vocational, avocational and recreational training programs. Such college may consist of one or more units operating within the boundaries of one county.

(2) The term "Board of Higher Education" refers to the North Carolina Board of Higher Education. (1957, c. 1098, s. 3.)

System May Consist of More Than One Unit.—This section expressly authorizes a community college system to establish two units. Wynn v. Trustees of Charlotte Community College Sys., 255 N.C. 594, 122 S.E.2d 404 (1961).

At Different Locations. — A board of trustees has full authority to establish two community colleges in different locations and as separate units. Wynn v. Trustees of Charlotte Community College Sys., 255 N.C. 594, 122 S.E.2d 404 (1961).

§ **116-50. Boards of trustees to govern colleges; composition; appointment, terms and qualifications of members; vacancies; election of officers.**—(a) Each community college shall be governed by a board of trustees consisting of twelve (12) members, appointed as follows:

Two (2) members by the governing board of the municipality in which the community college is located; provided, that, if the college is not located within the corporate limits of a municipality, then such appointment shall be by the governing board of the largest municipality, according to population, in the county in which the college is located.

Two (2) members by the board of commissioners of the county in which the community college is located.

Two (2) members by the board of education of the administrative school unit of the municipality in which, or partially in which, the community college is located; provided, that if the college is not located within the corporate limits of a municipality, then such appointment shall be by the board of education of the administrative school unit of the largest municipality, according to population, in the county in which the college is located, if there be such an administrative unit.

Two (2) members by the board of education of the county in which the community college is located; provided, however, that it shall appoint four (4) members if there is but one board of education for the county in which the college is located.

Four (4) members by the Governor of North Carolina. Trustees appointed by the governing board of a city or by a city board of education shall be residents of such municipality. Those appointed by a board of county commissioners, or by a county board of education shall be residents of the county (including the municipality) in which the college is located. Those appointed by the Governor shall be residents of the county (including the municipality) in which the college is located, or of a county contiguous thereto.

(b) Trustees shall be appointed for terms of six (6) years, except that of the first board of trustees of each college appointed pursuant to this article, each of the four (4) members appointed by the city and/or county boards of education shall be appointed for a six (6) year term, each of the four (4) members appointed by the governing board of the municipality and/or the board of commissioners of the county shall be appointed for a four (4) year term, and each of the four (4) members appointed by the Governor shall be appointed for a two (2) year term, plus such additional months as to each appointee as shall be necessary in order for their respective terms to expire on June 30th. After the first appointment of the first board of trustees of each college under this article, all terms of all trustees shall commence on July 1. The authority appointing a particular member shall, in the event a vacancy occurs through the loss of such member as a trustee, appoint a member to fill the vacancy for the unexpired term.

(c) The trustees shall elect annually from among their number a chairman and a vice-chairman. They shall also elect a secretary and a treasurer who may, but need not be, trustees. One person may be elected to serve as both secretary and treasurer. The officers so elected shall each serve for one year or until their successors in office shall be duly elected. The meeting for the election of such officers shall be held not earlier than July 1 and not later than September 1 of each year. (1957, c. 1098, s. 4.)

§ **116-51. Official title of board of trustees; name of college; powers generally.**—The board of trustees of each community college shall be known as "The Trustees of ...." filling in the name of the college; and such designation ("The Trustees of ....") shall constitute the official corporate name of the college. Such board shall be a body corporate, with all the powers usually conferred upon such bodies and necessary to enable it to acquire, hold and transfer property, make contracts, sue and be sued, and to exercise such other rights and privileges as may be necessary for the management and administration of the college, and for carrying out the provisions and purposes of this article. (1957, c. 1098, s. 5.)

§ **116-52. Enumerated powers of board.**—The trustees of each community college shall have authority, in the exercise of which they shall be subject to the provisions of article 16, chapter 116 of the General Statutes:

(1) To employ a president, dean or other chief administrative officer of the college upon such terms and conditions as the trustees shall fix and determine.

(2) To employ, or to delegate to the chief administrative officer the authority to employ subject to the approval of the trustees, all such other officers, teachers, instructors and employees as may be necessary for the operation of the college and to prescribe their titles and duties.

(3) To prescribe the curricula which shall be offered, and the certificates or degrees which shall be awarded upon satisfactory completion of any given course of study.

(4) To do all things necessary or proper to comply with any conditions which may be prescribed by the State of North Carolina or the United States of America in order to be eligible to receive moneys or other assistance appropriated or designated for the benefit of such institutions.

(5) To fix tuition, fees, and other charges for students attending or applying for attendance at the college.

(6) To prescribe and require the use of entrance examinations.

(7) To provide for an adequate system of accounting for all funds and property received, held, managed, expended or used by the college, and to require persons directly responsible for the handling of such funds to be adequately bonded.

(8) To purchase any land, easement or right-of-way which the trustees determine to be necessary for the proper operation of the college and, if the trustees of the college are unable to agree with the owners thereof for the purchase of such land, right-of-way or easement, to condemn same in the same manner and under the same procedure as is provided in Chapter 40 (Eminent Domain), Article 2 (Condemnation Proceedings), of the General Statutes of North Carolina. The determination of the trustees of the land necessary for such purpose shall be conclusive.

(9) To receive and accept private donations for such purposes and upon such terms as the donor may prescribe and which are consistent with the provisions of this article.

(10) To utilize, pursuant to agreement with any local administrative school unit, any service, property or facilities of any such unit, and, in their

discretion, to employ personnel jointly with any such unit on a cooperative, cost sharing basis.

(11) To perform such other acts and do such other things as may be necessary or proper for the exercise of the foregoing specific powers, including the adoption and enforcement of all reasonable rules, regulations and bylaws for the government and operation of the college under this article and for the discipline of students. (1957, c. 1098, s. 6.)

§ **116-53. Appropriations by State.**—(a) Appropriations by the State of North Carolina as grants-in-aid to community colleges for operating expenses shall be paid on the basis of a specified sum per student quarter-hour of instruction delivered in a limited curriculum consisting of courses at the freshman and sophomore levels in liberal arts and sciences and in the first and second year offerings of technical institutes of college grade prescribed by the Board of Higher Education. The total annual amounts of these grants-in-aid to each college shall not, except when the Appropriation Act specifically provides otherwise, exceed the total of local public or private funds (exclusive of student fees and charges) made available annually to such college for operating expenses. Certification on forms prescribed by the Board of Higher Education shall be made to said Board and upon approval by said Board payments shall be made by the State disbursing officer to each community college in amounts not in excess of appropriations therefor.

(b) Appropriations by the State of North Carolina for capital or permanent improvements for community colleges shall, except when the Appropriation Act specifically provides otherwise, be on an equal matching fund basis, the moneys raised by a particular community college from public or private sources being matched by an equal amount of State funds, up to but not in excess of appropriations therefor. The sole purposes for which such appropriations may be expended shall be to acquire real property and to construct and equip classrooms, laboratories, administration offices, utility plants, libraries, cafeterias, physical education instructional facilities, and auditorium facilities, in such order of priority as the Board of Higher Education and the Advisory Budget Commission shall determine. Such appropriations shall not be expended for any other purpose, it being expressly intended that the construction of all other facilities and procurement of all other equipment shall be the sole obligation and responsibility of the community college.

Preliminary studies and cost estimates for the construction of all buildings or other capital improvements and proposals for the purchase of all original equipment to be installed or used therein, involving the expenditure of State funds, shall be first submitted to and approved by the Board of Higher Education and the State Budget Bureau.

After approval by the Board of Higher Education and the Budget Bureau, payments shall be made by the State disbursing officer to the community college, within authorized appropriations, according to procedures established by the Budget Bureau. (1957, c. 1098, s. 7; 1961, c. 1099.)

§ **116-54. Local appropriations or bond issues to supplement State appropriations.** — When the State of North Carolina has made appropriations for the purpose of financing the cost of capital or permanent improvements for the benefit and use of one or more community colleges on such terms as shall require funds from other sources to supplement that part of said appropriations allocated to a particular community college and the amount of such funds available therefor is insufficient, the board of trustees of said community college may request the board of commissioners of the county in which said community college is situated to provide such funds. Upon receipt of such request said board of commissioners shall, within a reasonable time thereafter, proceed with providing sufficient funds either by appropriation in a manner consistent with the provisions of the County Fiscal Control Act or by issuance of bonds voted in an election called by said board of commissioners, or by both, as said board of commissioners may deem expedient. Any such bonds shall be issued pursuant to the County Finance Act, as amended, and shall be subject to the provisions of the Local Government Act. The board of commissioners shall not be required to call an election for the issuance of bonds for the benefit of a community college within two (2) years after the date of the last preceding election for such purpose. The request to the board of commissioners shall specify the amount of funds required to be provided in order to match State appropriation: Provided, the board of trustees may at the same time request an amount in addition to the amount required to match State appropriation either for the same or for different purposes for which such State appropriation is made and may at any time request the board of commissioners may [to] proceed to provide funds to meet such requests for funds not required to match State appropriation by county appropriation or bond issue as hereinabove provided or may modify such request and proceed or may deny such request. Bonds may be authorized for such amount required to match State appropriation and for such additional amount by a single bond order or by separate bond orders in the discretion of the board of commissioners. (1957, c. 1098, s. 8.)

§ **116-55. Disposition of proceeds of local bond issue.**—The proceeds of the sale of bonds issued by a county for a community college, after deducting therefrom the cost of preparing, issuing and marketing said bonds and the amount of any accrued interest and premium contained therein, may be turned over to the board of trustees of such community college, in which event no member of the board of commissioners of the county nor any county officer shall be liable for a penalty under the provisions of G.S. 153-107 with respect to the application of such proceeds. (1957, c. 1098, s. 9.)

Taxpayer May Not Object Because Unit Racially Segregated.—Plaintiffs alleged the use of bond proceeds for the construction of a unit of a community college system was for an illegal and unauthorized purpose on the ground it would be operated as a racially segregated public college facility in violation of the 14th Amendment of the U.S. Constitution. Plaintiffs and all other property owners were subject to the ad valorem tax levied to provide funds for the payment of the bonds. No fact alleged indicated plaintiffs would be otherwise affected by the construction and operation of the college. Upon the facts alleged, no constitutional right of plaintiffs was denied. A constitutional question may not be raised by one whose rights are not directly and certainly affected. Wynn v. Trustees of Charlotte Community College Sys., 255 N.C. 594, 122 S.E.2d 404 (1961).

Funds May Be Used for More Than One Unit.—The expenditure of public funds to provide necessary facilities and services at each of two units of a community college system is not an expenditure for an illegal or unauthorized purpose. Wynn v. Trustees of Charlotte Community College Sys., 255 N.C. 594, 122 S.E.2d 404 (1961).

§ **116-56. County taxes for maintenance of college; election on question of levying.** — Notwithstanding any constitutional limitation or limitation provided by any general or special law, taxes may be levied by the board of commissioners of a county for the purpose of financing the cost of operation, equipment and maintenance of any community college situated within the boundaries of the county, and the special approval of the General Assembly is hereby given for the annual levying of taxes for such special purposes: Provided, that the levy of such special taxes shall be approved by the vote of a majority of the qualified voters of such county who shall vote on the question of levying such taxes in an election held for such purpose. The board of trustees may request the board of commissioners of the county to call an election, as hereinafter provided, upon the question of levying such taxes and shall specify in such request the maximum rate or amount of such taxes. Upon receipt of such request the board of commissioners of the county shall, within a reasonable time thereafter, submit the question of the authorization to levy such taxes at an election. The question of levying such taxes may be submitted at the same time as the question of issuance of bonds referred to in § 116-54 is submitted, or such question may be submitted at a separate election. A ballot shall be furnished to each qualified voter at said election, which ballot may contain the words "For Community College maintenance tax (briefly stating any other pertinent information)," and "Against Community College maintenance tax, (briefly stating any other pertinent information)," with a square in front of each proposition, in one of which squares the voter may make a cross mark (X), but any other form of ballot containing adequate information and properly stating the question to be voted upon shall be construed as being in compliance with this article. Such election may be held at the same time and in the same manner as elections held under article 9, chapter 153 of the General Statutes, the same being designated as the County Finance Act, beginning with § 153-69 and sections following, or said election may be held at any time fixed by the board of commissioners of the county.

On or before the 1st day of May of each year the board of trustees shall notify the board of commissioners of the county of the amount of such taxes to be levied in such year and it shall be the duty of the board of commissioners of the county to levy such taxes accordingly. Such taxes shall be levied and collected in the same manner as other taxes of the county are levied and collected, and the collections thereof shall be turned over to the board of trustees by the end of each month. (1957, c. 1098, s. 10.)

§ 116-57. Election by college to come under article; procedure; provisions as to certain colleges.—Any college now or hereafter eligible, or desiring to become eligible, to receive the benefit of any direct appropriations of the State of North Carolina as a community college, and which desires to take advantage of such appropriations, must first elect to come under the provisions of this article. Such election shall be duly made by the governing board of the college and by such other group or body as may be necessary under the provisions of any charter or bylaws applicable to the college in question.

The resolutions of election to come under the provisions of this article shall include appropriate resolutions:

(1) Electing to come under the provisions of this article and to have this article, as written and as subsequently amended, serve as the charter of said college in lieu of any existing charter or other authority under which the existing college is operated;
(2) Designating the name by which the community college shall be known;
(3) Providing for the transfer and conveyance of all assets owned or used by the existing college to the community college (authority is hereby given to any board of education, board of county commissioners or governing board of any municipality owning funds and properties so used, to transfer and convey same to a community college in the county, without consideration, upon authorization of an annual tax levy for the maintenance of such college);
(4) Petitioning the State of North Carolina to approve it as a community college, and
(5) Providing that all such resolutions of election are adopted subject to approval of such institution by the State of North Carolina as a community college and subject to the authorization of an annual tax levy by a vote of the people of the county in which the college is located.

The petition of the college for approval, accompanied by a copy of all resolutions of election to come under the provisions of this article, duly certified by the president or chairman of the governing board of the college and attested by the secretary, shall be submitted to the Board of Higher Education for approval. Written approval of the petition by the Board of Higher Education and the Advisory Budget Commission, and by the Attorney General as to form and legality, shall constitute approval by the State of North Carolina, subject to an authorization of an annual tax levy as aforesaid.

The petition for approval as a community college of any existing college which, prior to June 5, 1957, has received appropriations from State funds and is receiving public support from any county and/or municipal tax or nontax revenues may be approved, and may operate as a community college under this article, without an authorization of an annual tax levy by a vote of the people of the county in which the college is located.

For good cause shown, the Board of Higher Education and the Advisory Budget Commission may approve the petition of the petitioning college without requiring the transfer of all funds and properties used by it to the community college, provided that the petitioner shall comply with such conditions as said Board and Commission may impose to assure the provision of adequate facilities for the community college. Following approval of the State of North Carolina as aforesaid, the board of commissioners of the county in which the college is located shall, within a reasonable time after receiving a request from the governing board of the college therefor, submit at an election the question of levying taxes to finance the operation, equipment and maintenance thereof. Such election shall be called and held in accordance with the provisions of § 116-56.

If the governing board of the existing college shall submit to the Board of Higher Education, within eighteen months after the approval of the college by the State of North Carolina as aforesaid, a certificate of the result of such election showing approval of levying of taxes for the maintenance of the college as a community college, the Board of Higher Education shall, upon receipt thereof, file the resolutions of election, together with written approval thereof as aforesaid, and the certificate of the result of the election in the office of the Secretary of State.

From and after the filing of said documents in the office of the Secretary of State, said college shall be a community college under this article; the existing governing board shall continue to act pending appointment of the first board of trustees under this article; said existing board shall take all such action as shall be necessary and proper to transfer the funds and properties owned or used by the former institution to the new community college and to dissolve or otherwise terminate the former corporation, if such there be. From and after the organization of the new community college this article shall serve as its charter.

Asheville-Biltmore College, Charlotte College (including Carver College), and Wilmington College (including Williston unit) may, by filing with the Board of Higher Education a petition for approval as a community college, receive during the fiscal year July 1, 1957 through June 30, 1958 any appropriations from State funds for operating expenses for community colleges in the manner provided in § 116-53 (a). Such funds may be paid, with the approval of the Board of Higher Education, to the college or to the county or city administrative school unit operating such college. The petitioner shall, prior to June 30, 1958, comply with all of the applicable provisions of this article for qualification as a community college. If the Board of Higher Education shall find that the petitioner is not proceeding with reasonable diligence to comply with the provisions of this article, it is hereby authorized to withhold from such college State appropriations. (1957, c. 1098, s. 11.)

Editor's Note.—"Charlotte College," referred to in the last paragraph of this section, is now "The University of North Carolina at Charlotte." See § 116-39.

§ 116-58. Establishment of community college.—In any county not having a college supported by local public funds which would be eligible for establishment as a community college under this article, the county board of education may petition the State of North Carolina for authority to establish a community college under this article in said county. The petition shall be submitted to the Board of Higher Education and shall contain such information concerning the proposed location and plans for the financing and operation of the college as the Board of Higher Education may require. Written approval of the petition by the Board of Higher Education and the Advisory Budget Commission, and by the Attorney General as to form and legality, shall constitute approval by the State of North Carolina, subject to the authorization of an annual tax levy for the operation, equipment and maintenance of the proposed college by a vote of the people of the county in which the college is to be located. Following approval of the State of North Carolina as aforesaid, the board of commissioners of the county in which it is proposed that the college shall be located shall, within a reasonable time after receiving a request from the petitioning county board of education therefor, submit at an election the question of levying taxes to finance the operation, equipment and maintenance of such college. The election shall be called and held in accordance with the provisions of § 116-56.

If, within eighteen months after the approval of the petition by the State of North Carolina as aforesaid, the petitioning county board of education shall submit to the Board of Higher Education a certificate of the result of such election showing approval of the levying of taxes for the maintenance of the proposed community college, the Board of Higher Education shall file the petition, together with the written approval thereof as aforesaid, and the certificate of the result of the election in the office of the Secretary of State.

From and after the filing of said documents in the office of the Secretary of State, said proposed college shall be deemed chartered as a community college under this article; provided, however, that unless and until appropriations shall be made by the State of North Carolina for the benefit of said college the trustees who would otherwise be appointed by the Governor of North Carolina, under § 116-50 (a), shall be appointed by the petitioning county board of education and their successors in office and shall all be residents of the county in which the college is located.

Approval of the petition by the State of North Carolina as aforesaid shall become null and void at the end of eighteen months from the date of such approval if the election hereinabove provided for authorizing the levying of taxes for the maintenance of the community college shall not have been held and voted upon favorably within that time. (1957, c. 1098, s. 12.)

§ **116-59. Board of Higher Education authorized to establish minimum standards.**—The Board of Higher Education shall have authority to prescribe minimum standards with respect to student enrollment or prospective enrollment in academic courses, facilities, and other pertinent matters for approval as a community college under this article. (1957, c. 1098, s. 13.)

§ **116-60. Payment of expenses of special election under article.**—The cost of any special election held under authority of this article shall be paid out of the general fund of the county or, in the discretion of the board of commissioners of the county and with the concurrence of the board of education of the county, out of the school current expense fund of the county, and the authority to appropriate from school current expense fund for such cost is hereby given. (1957, c. 1098, s. 14.)

§ **116-61. Discontinuance as a community college.** — A community college may, by appropriate resolutions of its trustees and of the board of commissioners of the county in which it is located elect to discontinue its existence and operation as a community college under this article as of the end of any regular school year; provided, however, that any community college which shall have accepted funds from the State of North Carolina for capital or permanent improvements shall, upon its discontinuance as a community college under this article, pay to the State of North Carolina a sum equal to all appropriations made by the State to said college for capital or permanent improvements, less 2½% per annum from the date of payment of each such appropriation by the State to the date of such discontinuance as a community college; provided, further, that such payment may, for good cause, be waived in part or in toto by the Governor and the Advisory Budget Commission, acting jointly. If such payment, not being waived, is not made within ninety days after the discontinuance of the college as a community college under this article, such failure to pay shall work an automatic forfeiture of all the assets and property of the college to the State of North Carolina. (1957, c. 1098, s. 15.)

§ **116-62. Construction and effect of article.** — This article is in addition to and shall not be construed as superseding or repealing any prior act of the General Assembly establishing or authorizing the establishment of any college or the levy of taxes or the appropriation of local public funds for the support of any college. (1957, c. 1098, s. 17.)

§ **116-62.1. Motor vehicle laws applicable to streets, alleys and driveways on campus of Chowan College; college trustees authorized to adopt traffic regulations.**—(a) All the provisions of chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the campus of Chowan College. Any person violating any of the provisions of said chapter in or on such streets, alleys or driveways on the campus of Chowan College shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on the campus of Chowan College as is now vested by law in the trustees of Chowan College or town of Murfreesboro.

(b) The board of trustees of Chowan College is authorized to make such additional rules and regulations and adopt such additional ordinances with respect to the use of the streets, alleys, driveways, and to the establishment of parking areas on such campus not inconsistent with the provisions of chapter 20, General Statutes of North Carolina, and the ordinances of the town of Murfreesboro, as in its opinion may be necessary. All regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the board and printed, and copies of such regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Any person violating any such regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor, and shall be punishable by fine of not exceeding fifty dollars ($50.00) or imprisonment for not exceeding thirty days.

(c) The board of trustees of Chowan College shall cause to be posted at appropriate places on the campus of Chowan College notice to the public of applicable speed limits and parking laws and ordinances. (1965, c. 688.)

Article 4.

School for Professional Training in Performing Arts.

§ **116-63. Policy.** — It is hereby declared to be the policy of the State to foster, encourage and promote, and to provide assistance for, the cultural development of the citizens of North Carolina, and to this end the General Assembly does create and provide for a training center for instruction in the performing arts. (1963, c. 1116.)

Cross Reference.—See Editor's Note to § 116-45.

§ **116-64. Establishment of school.**—There is hereby established, and there shall be maintained, a school for the professional training of students having exceptional talent in the performing arts which shall be defined as an educational institution of the State, to serve the students of North Carolina and other states, particularly other states of the South. (1963, c. 1116.)

§ 116-65. Board of trustees to govern; appointment of members; terms; officers; title of board; powers generally.—The school shall be governed by a board of trustees consisting of twelve members, appointed by the Governor, who will serve terms of six (6) years, except that, of the first board of trustees appointed pursuant to this article, four members of the said board of trustees shall serve for terms of six (6) years, four members shall serve for terms of four (4) years, and four members shall serve for terms of two (2) years, with all terms to commence on July 1 of the year in which the members shall be appointed. The conductor of the North Carolina Symphony shall be an ex officio member of the board of trustees. In the event of a vacancy arising, the Governor shall appoint a member to fill the vacancy for the unexpired term.

The board of trustees shall elect annually from their number a chairman and a vice-chairman. The board shall also elect a secretary and a treasurer, who may, but need not be, a member of the board of trustees, and the offices of secretary and treasurer may be held by the same person. The meeting for the election of officers shall be held not earlier than July 1 and not later than September 1 of each year. Officers shall be elected to serve for terms of one (1) year, and until their successors are elected and qualified. The board of trustees shall be known as "The Trustees of ...." (here insert name of school) and shall be a body corporate, with all the powers usually conferred upon such bodies and necessary to enable it to acquire, hold and transfer property, make contracts, sue and be sued, and to exercise such other rights and privileges as may be necessary for the management and administration of the school, and for carrying out the provisions and purposes of this article. (1963, c. 1116.)

§ 116-66. Enumerated powers of board.—The trustees of the said school shall have authority, in the exercise of which they shall be advised and assisted by the State Board of Education and the State Board of Higher Education, as the level of training programs for high school and college students in the school may require, and by the advisory board of the school:

(1) To meet, as soon as practicable after appointment, to consider sites which may be offered as a location for the school. From all sites offered, the board of trustees shall recommend to the Governor that site considered most suitable as the location for the said school, and shall, upon the Governor's approval of that site, or of some subsequently recommended site, and pursuant to the authority herein granted to it, establish the school at that approved site.

(2) To select an appropriate name for the school which shall be acceptable to the Governor and the advisory board, and to supporting donors.

(3) To receive and accept private donations for such purposes and upon such terms as the donor may prescribe and which are consistent with the provisions of this article.

(4) To employ a president, dean or other chief administrative officer of the school, who shall be preferably a noted composer or dramatist, upon such terms and conditions as the trustees shall fix and determine.

(5) To employ, or to authorize the chief administrative officer to employ, subject to the approval of the trustees, all such other officers, teachers, instructors and employees as may be necessary for the operation of the school and to prescribe their titles and duties, the chief criteria to be their excellence in the performing arts and their professional standing therein, rather than academic degrees and training.

(6) To prescribe, with the advice and approval of the State Board of Education and the State Board of Higher Education, as appropriate, and in consultation with the advisory board of the school, the curricula

which shall be offered, and the certificates or degrees which shall be awarded upon satisfactory completion of any given course of study.

(7) To do all things necessary or proper to comply with any conditions which may be prescribed by the State of North Carolina or the United States of America in order to be eligible to receive moneys or other assistance appropriated or designated for the benefit of such institutions.

(8) To fix tuition, fees, and other charges for students attending or applying for attendance at the school.

(9) To prescribe and require the use of entrance examinations, so that professional training shall be made available only to those students who possess exceptional talent in the performing arts.

(10) In conformity with the provisions of article 1 of chapter 143 of the General Statutes, entitled "The Executive Budget Act," to provide for an adequate system of accounting for all funds and property received, held, managed, expended or used by the school, and to require persons directly responsible for the handling of such funds to be adequately bonded.

(11) To utilize, pursuant to agreement with institutions of higher education or with any local administrative school unit, existing facilities and such academic nonarts courses and programs of instruction which will be needed by the students of the school, and, in their discretion, to employ personnel jointly with any such unit on a cooperative, cost sharing basis.

(12) To hold in trust for the State of North Carolina title to all property which may be acquired by the said board for the benefit of the school.

(13) To provide for the management of all the affairs of the school, subject to the applicable laws of the State, and particularly subject to the provisions of the Executive Budget Act, and to provide for the handling and expenditure of all moneys whatsoever belonging to, appropriated to, or in any way acquired by the said institution or board of trustees; to provide for the erection of all buildings, the making of all needed improvements and the maintenance of the physical plant of said school.

(14) To confer and cooperate with the Southern Regional Education Board and with other regional and national organizations to obtain wide support and to establish the school as the center in the South for the professional training and performance of artists.

(15) To perform such other acts and do such other things as may be necessary or proper for the exercise of the foregoing specific powers, including the adoption and enforcement of all reasonable rules, regulations and bylaws for the government and operation of the school under this article and for the discipline of students. (1963, c. 1116.)

§ **116-67. Advisory board.**—An advisory board, to consist of at least ten members who shall have achieved national, or international distinction as performers, playwrights, or composers, shall be appointed by the Governor, to serve for terms of eight (8) years each; provided, that of the original advisory board, one third shall be appointed for terms of eight (8) years, one third shall be appointed for terms of six (6) years, and one third shall be appointed for terms of four (4) years. The members of the advisory board shall be notified of all meetings of the board of trustees, and shall be invited to attend such meetings and to advise and counsel with the board of trustees, but the members of the advisory board shall not be entitled to vote. Vacancies arising on the said advisory board shall be filled by election of replacement members by the advisory board, with the approval of the Governor, for terms of eight (8) years, or, if to fill a vacancy arising during an unexpired term, for the remainder of the term of the vacating member. (1963, c. 1116.)

§ 116-68. Endowment fund.—The board of trustees is authorized to establish a permanent endowment fund, and shall perform such duties in relation thereto as are prescribed by the provisions of G.S. 116-46 (7). (1963, c. 1116.)

§ 116-69. Purpose of school program.—The primary purpose of the school shall be the professional training, as distinguished from liberal arts instruction, of talented students in the fields of music, drama, the dance, and allied performing arts, at both the high school and college levels of instruction, with emphasis placed upon performance of the arts, and not upon academic studies of the arts. The said school may also offer high school and college instruction in academic subjects, and such other programs as are deemed necessary to meet the needs of its students and of the State, consistent with appropriations made and gifts received therefor, and may cooperate, if it chooses, with other schools which provide such courses of instruction. The school, on occasion, may accept elementary grade students of rare talent, and shall arrange for such students, in cooperation with an elementary school, a suitable educational program. (1963, c. 1116.)

§ 116-70. Applicable statutes.—All of the powers, duties and responsibilities herein conferred shall be subject to the provisions of article 1, chapter 143 of the General Statutes, entitled "Executive Budget Act," and article 2, chapter 143 of the General Statutes, entitled "State Personnel Department." (1963, c. 1116.)

Article 5.

Loan Fund for Prospective College Teachers.

§ 116-71. Purpose of article.—The purpose of this article is to encourage, assist, and expedite the postgraduate level education and training of competent teachers for the public and private universities, colleges and technical institutes in this State by the granting of loans to finance such study. The funds shall be used to increase the number of teaching faculty as distinguished from research specialists. (1965, c. 1148, s. 1.)

Cross Reference.—See Editor's Note to § 116-45.

§ 116-72. Fund established.—There is established a loan fund for prospective college teachers to assist capable persons to pursue study and training leading to masters or doctorate degrees in preparation to become teachers in the public and private institutions of education beyond the high school in North Carolina. Both private and public sources may be solicited in the creation of the fund. (1965, c. 1148, s. 1.)

§ 116-73. Joint committee for administration of Fund; rules and regulations.—"The Scholarship Loan Fund for Prospective College Teachers" shall be the responsibility of the State Board of Higher Education and the State Board of Education and will be administered by them through a joint committee, "The College Scholarship Loan Committee." This committee will operate under the following rules and regulations and under such further rules and regulations as the State Board of Higher Education and the State Board of Education shall jointly promulgate.

(1) The nomination of applicants and recommendations of renewals shall be the responsibility of the College Scholarship Loan Committee.

(2) Loans should be made for a single academic year (nine months) with renewal possible for two successive years for students successfully pursuing masters or doctoral programs. Loans shall not exceed two thousand dollars ($2,000.00) for single students and three thousand dollars ($3,000.00) for married students.

(3) All scholarship loans shall be evidenced by notes, with sufficient sureties, made payable to the State Board of Education and shall bear interest at the rate of four percent (4%) per annum from and after September 1 following the awarding of the candidate's degree.

(4) Recipients of loans may have them repaid by teaching in a college or other educational institution beyond the high school level in North Carolina upon completion of their masters or doctorate degree program, at the rate of one hundred dollars ($100.00) per month for each month of such teaching. If a student supported by a loan in this program should fail to so teach in a North Carolina institution, the loan would become repayable to the State, with interest, for that part of the teaching commitment not met, said note to be repaid according to the terms thereof.

(5) Loans for twelve weeks of summer study, carrying stipends not to exceed five hundred dollars ($500.00) for single and married students, should be available to students who do not plan to attend postgraduate school as full-time students during the regular academic year. Recipients should be eligible for up to three renewals over a four-year period. The obligation to teach in a North Carolina college or other educational institution, or failing that, to repay the State, shall apply proportionally as indicated above. (1965, c. 1148, s. 1.)

§ **116-74. Duration of Fund; use of repaid loans and interest.**—The Scholarship Loan Fund for Prospective College Teachers shall continue in effect until terminated by action of the General Assembly of North Carolina. Such amounts of loans as shall be repaid from time to time under the provisions of this article, together with such amounts of interest as may be received on account of loans made shall become a part of the principal amount of said Loan Fund. These funds shall be administered for the same purposes and under the same provisions as are set forth herein to the end that they may be utilized in addition to such further amounts as may be privately donated or appropriated from time to time by public or corporate bodies. (1965, c. 1148, s. 1.)

Articles 6-9.

[*Repealed.*]

§§ **116-75 to 116-104:** Repealed by Session Laws 1957, c. 1142.

Article 10.

State School for the Blind and the Deaf in Raleigh.

§§ **116-105 to 116-119:** Transferred to §§ 115-321 to 115-335 by Session Laws 1963, c. 448, s. 28.

Article 11.

North Carolina School for the Deaf at Morganton.

§ **116-120:** Transferred to § 115-336 by Session Laws 1963, c. 448, s. 28.

§§ **116-121 to 116-124:** Repealed by Session Laws 1963, c. 448, s. 28.

§ **116-124.1.** Transferred to § 115-342 by Session Laws 1963, c. 448, s. 28.

§ **116-125:** Transferred to § 115-343 by Session Laws 1963, c. 448, s. 28.

Article 11A.

Eastern North Carolina School for the Deaf and North Carolina School for the Deaf at Morganton.

§§ **116-125.1 to 116-125.5:** Transferred to §§ 115-337 to 115-341 by Session Laws 1963, c. 448, s. 28.

Article 12.

The Caswell School.

§§ **116-126 to 116-137:** Repealed by Session Laws 1963, c. 1184, s. 7.

Article 13.

Colored Orphanage of North Carolina.

§§ **116-138 to 116-142:** Transferred to §§ 115-344 to 115-348 by Session Laws 1963, c. 448, s. 28.

Article 13A.

Negro Training School for Feebleminded Children.

§§ **116-142.1 to 116-142.10:** Repealed by Session Laws 1963, c. 1184, s. 8.

Article 14.

General Provisions as to Tuition Fees in Certain State Institutions.

§ **116-143. State-supported institutions of higher education required to charge tuition fees.**—Each of the board of trustees of the several institutions of higher education provided for in articles 1, 2, and 3 of chapter 116 shall fix the tuition and fees for the institution or institutions under its control, in such amount or amounts as it may deem best, taking into consideration the nature of each institution and program of study and the cost of equipment and maintenance; and each board shall charge and collect from each student, at the beginning of each semester or quarter, tuition, fees, and an amount sufficient to pay other expenses for the term.

In the event that said students are unable to pay the cost of tuition and required academic fees as the same may become due, in cash, the said several boards of trustees are hereby authorized and empowered, in their discretion, to accept the obligation of the student or students together with such collateral or security as they may deem necessary and proper, it being the purpose of this article that all students in State institutions of higher learning shall be required to pay tuition, and that free tuition is hereby abolished.

Inasmuch as the giving of tuition and fee waivers, or especially reduced rates, represent in effect a variety of scholarship awards, the said practice is hereby prohibited except where expressly authorized by statute; and, furthermore, it is hereby directed and required that all budgeted funds expended for scholarships of any type must be clearly identified in budget reports.

Where an individual serves as a faculty member on a part-time basis and is enrolled at the same time as a part-time student, a special tuition rate not lower than the North Carolina resident rate may be granted in the discretion of the board of trustees of the institution.

Notwithstanding the above provision relating to the abolition of free tuition, the said boards of trustees of the institutions of higher education provided for in articles 1 and 2 of chapter 116 may, in their discretion, provide regulations under which a full-time faculty member of the rank of full-time instructor or above, and any full-time staff member, may during the period of normal employment enroll for courses in their respective institutions free of charge for tuition, provided such enrollment does not interfere with normal employment obligations. (1933, c. 320, s. 1; 1939, cc. 178, 253; 1949, c. 586; 1961, c. 833, s. 16.1; 1963, c. 448, s. 27.1; 1965, c. 903.)

Editor's Note.—The 1963 amendment rewrote the first paragraph.

The 1965 amendment added the last paragraph.

Cited in Barker v. Iowa Mut. Ins. Co., 241 N.C. 397, 85 S.E.2d 305 (1955).

§ **116-144. Higher fees from nonresidents may be charged.**—The provisions of this article shall not be construed to prohibit the several boards of trustees from charging nonresident students tuition in excess of that charged resident students. (1933, c. 320, s. 3.)

Cited in Barker v. Iowa Mut. Ins. Co., 241 N.C. 397, 85 S.E.2d 305 (1955).

ARTICLE 15.

Educational Advantages for Children of World War Veterans.

§§ **116-145 to 116-148.1:** Repealed by Session Laws 1951, c. 1160, s. 1.

§ **116-149. Definitions.**—(a) As used in this article, "veteran" means a person who served as a member of the armed forces of the United States at any time between April 6, 1917, the date of the declaration of war with respect to the war known as World War I, and July 2, 1921, or between December 7, 1941, the date of the declaration of war with respect to the war known as World War II, and December 31, 1946, and who was separated from the armed forces under conditions other than dishonorable. A person who was separated from the armed forces under conditions other than dishonorable and whose death or disability was incurred (i) as a direct result of armed conflict or (ii) while engaged in extrahazardous service including such service under conditions simulating war, shall also be deemed a "veteran" and such death or disability shall be considered wartime service-connected.

(b) As used in this article, "eligible child" means:

(1) A child of a veteran who was a legal resident of North Carolina at the time of said veteran's entrance into the armed forces, or

(2) A veteran's child who was born in North Carolina and has lived in North Carolina continuously since birth. Provided, that the requirement in the preceding sentence as to birth in North Carolina be waived by the North Carolina Veterans Commission if it is shown to the satisfaction of the Commission that the child's mother was a native born resident of North Carolina and was such resident at the time of her marriage to the veteran and was outside the State temporarily at the time of the child's birth, following which the child was returned to North Carolina within a reasonable period of time where said child has since lived continuously.

(3) A child meeting either of the requirements set forth in subdivisions (1) and (2) above, and who was legally adopted by the veteran prior to or during such military service in which such veteran served and/or became disabled or died. (1951, c. 1160, s. 1; 1955, c. 469; 1963, c. 384, s. 1; 1965, c. 749, s. 1.)

Editor's Note. — The 1963 amendment added the proviso to subsection (b) (2).

The 1965 amendment added the last sentence in subsection (a).

This State has attempted to provide for the education of children of her quota of **disabled veterans**; that is, those veterans who were residents of this State at the time they were inducted or whose children were born and remained in the State, and, prima facie, this is a reasonable distinction. Ramsey v. North Carolina Veterans Comm'n, 261 N.C. 645, 135 S.E.2d 659 (1964).

And it was not the purpose of the General Assembly to impose the burden of another state's quota upon the taxpayers of this State. Ramsey v. North Carolina Veterans Comm'n, 261 N.C. 645, 135 S.E.2d 659 (1964).

Constitutionality of Subsection (b). — The provisions of subsection (b) defining those eligible for scholarships as children of veterans resident of North Carolina at the time of induction or a veteran's child who was born in North Carolina and has lived here continuously since birth, is held not unconstitutional as discriminating against children of disabled veterans who have moved their residence to this State after birth of the children. Ramsey v. North Carolina Veterans Comm'n, 261 N.C. 645, 135 S.E.2d 659 (1964).

Limitation on Power of Court.—Should the legislative designation of beneficiaries of scholarships contained in subsection (b) be held unconstitutional, the court would remain without authority to specify a residence requirement and legislate a petitioner into the classification of an "eligible child," as only the General Assembly may amend or rewrite a statute. Ramsey v. North Carolina Veterans Comm'n, 261 N.C. 645, 135 S.E.2d 659 (1964).

§ **116-149.1. "State educational institution" defined to include community college.**—The term "State educational institution" as referred to in this article is hereby defined to include any community college operated under the provisions of article 3 of this chapter of the General Statutes of North Carolina. (1965, c. 1160.)

§ **116-150. Scholarship.**—A scholarship granted pursuant to this article shall consist of free tuition, room and a reasonable board allowance in any State educational institution and such other items and institutional services as are embraced within the so-called institutional matriculation fees and other special fees and charges required to be paid as a condition to remaining in said institution and pursuing the course of study selected: Provided, the scholarships awarded under the one hundred percent (100%) service-connected disability provision, as the same appears in G.S. 116-151(1) shall be limited to free tuition only.

Every applicant for benefits pursuant to this section shall furnish a statement from the United States Veterans Administration stating such facts as the Administration records disclose showing that the applicant comes within the provisions of this article.

A scholarship granted pursuant to this article shall not extend for a longer period than four academic years with respect to any one child, which years, however, need not be consecutive. (1951, c. 1160, s. 1; 1965, c. 392, s. 1.)

Editor's Note. — The 1965 amendment added the proviso at the end of the first paragraph.

§ **116-151. Classes of eligible children entitled to scholarships.**—An eligible child shall be entitled to and granted a scholarship as provided by this article if such child falls within the provisions of any one of the three classes described below, subject to any limitations set out therein. The North Carolina Veterans Commission shall determine the eligibility of applicants, select the scholarship recipients and maintain necessary records on scholarship applications and awards.

(1) Class I: Any eligible child whose father was killed in action or died from wounds or other causes while a member of the armed forces during either period of military service or under the conditions of military service described in § 116-149, or whose father has died as a direct result of injuries, wounds, or other illness contracted during said service, or any eligible child whose father is or was a veteran who, at the time the benefits pursuant to this article are sought to be availed of, is

suffering from, or who at the time of his death was suffering from, one hundred percent (100%) wartime service-connected disability, as rated by the United States Veterans Administration, and who is or was drawing compensation for such disability.

(2) Class II: Any eligible child whose father is or was a veteran, who at the time the benefits pursuant to this article are sought to be availed of, is suffering from, or who at the time of his death, was suffering from, a wartime service-connected disability of thirty percent (30%) or more, but less than one hundred percent (100%), as rated by the United States Veterans Administration; or any eligible child whose father is or was a veteran and was a prisoner of war for a period of at least six (6) months and who was wounded in combat against an enemy of the United States of America during the time of war and is or was at the time of his death suffering from a service-connected disability of twenty percent (20%) or more as rated by the United State Veterans Administration; provided that benefits pursuant to § 116-150 for this class of eligible children shall be limited to not more than one hundred (100) eligible children in any one school year; provided further that a lesser number may be selected in the discretion of the North Carolina Veterans Commission. A statutory award for tuberculosis, pulmonary, arrested, shall be considered as meeting the criteria of disability as set forth with respect to this class.

(3) Class III: Any eligible child whose father is or was a veteran who, at the time the benefits pursuant to this article are sought to be availed of, is suffering from, or who at the time of his death was suffering from, one hundred percent (100%) nonservice-connected disability, as rated by the United States Veterans Administration, and who is or was drawing compensation for such disability; provided that benefits pursuant to § 116-150 for this class of eligible children shall be limited to not more than fifty (50) children in any one school year; provided further that a lesser number may be selected in the discretion of the North Carolina Veterans Commission. (1951, c. 1160, s. 1; 1955, c. 1192; 1963, c. 384, s. 2; 1965, c. 392, ss. 2-4; c. 749, ss. 2, 3.)

Editor's Note.—The 1963 amendment inserted the second sentence of the first paragraph. It also rewrote subdivision (2) and the latter part of subdivision (3).

Sections 2 and 3 of c. 392, Session Laws 1965, inserted "wartime" preceding "service-connected" near the end of subdivision (1) and near the beginning of subdivision (2) and inserted "but less than one hundred percent (100%)" near the beginning of subdivision (2). Section 4 of c. 392 substituted "one hundred (100)" for "fifty (50)" in the first proviso at the end of the first sentence in subdivision (2).

Section 2 and 3 of c. 749, Session Laws 1965, substituted "period of military service or under the conditions of military service" for "period of military services" near the beginning of subdivision (1), and in the same subdivision deleted "period of" formerly appearing between "said" and "service."

§ **116-152. Institution reimbursed for free room rent and board.**—Any State educational institution furnishing free room rent and board allowance pursuant to this article shall be reimbursed therefor from the State Contingency and Emergency Fund at such rate as the Director of the Budget may determine to be reasonable. (1951, c. 1160, s. 1.)

§ **116-153. Scholarships for children of veterans of World War I dying in veterans hospitals.**—Any child of a veteran of World War I who has died or dies in a hospital maintained by the Veterans Administration or after his discharge from such institution as incurable following an illness or disablement for at least five (5) years preceding his death and who leaves no real estate above the homestead exemption and no more than one thousand dollars ($1,000.00) in personal property, shall be awarded the scholarships described in G.S. 116-150 provided such child was born in North Carolina, is or was a resident of North Carolina upon the death of such veteran, is less than twenty (20) years of age at the time of application for such scholarship, presents reasonable proof for the need of such scholarship, and is a resident of North Carolina at the time of application for such scholarship. Proof of compliance with the requirements of this section and of the need for such scholarship shall be presented to the board of trustees of the institution such child desires to attend. Scholarships provided under this section shall be limited to a standard four (4) year undergraduate course. Provided, however, that benefits hereunder shall be limited to not more than five (5) children in any one school year; provided further, that if more than five (5) children apply for such benefits in any one school year, the North Carolina Veterans Commission shall designate the five (5) children who shall receive such benefits. (1953, c. 1336.)

Article 16.

State Board of Higher Education.

§ **116-154. Creation and purpose.**—There is hereby created the North Carolina Board of Higher Education. The purpose of the Board shall be, through the exercise of the powers and performance of the duties set forth in this article, to plan and promote the development of a sound, vigorous, progressive, and coordinated system of higher education in the State of North Carolina. In pursuit of this objective the Board will seek the cooperation of all the institutions of higher education and of other educational agencies in planning a system of higher education that will serve all the higher educational needs of the State and that will encourage a high standard of excellence in all institutions composing the system, each operating under the direction of its own board of trustees in the performance of the functions assigned to it. (1955, c. 1186, s. 1; 1959, c. 326, s. 1.)

Editor's Note.—Session Laws 1957, c. 1142, inserting §§ 116-45 and 116-46, provides: "Nothing herein contained shall be taken as repealing or altering any section of G.S. 116-154 through G.S. 116-167; and in the event of any conflict between the provisions of this act and G.S. 116-154 through G.S. 116-167, inclusive, the latter shall control."

§ **116-155. Definitions.**—As used herein:

"Board" refers to the North Carolina Board of Higher Education.

"Higher education" refers to all educational and instructional curricula and services in the university system and the senior colleges.

"Institutions of higher education" and "such institutions" refer to all senior institutions of higher education now existing or hereafter established supported wholly or in part by direct appropriations of the North Carolina General Assembly.

"Senior colleges" refers to all State supported four-year colleges, except the university system. (1955, c. 1186, s. 2; 1965, c. 1096, s. 1.)

Editor's Note. — The 1965 amendment substituted "in the university system and the senior colleges" for "beyond the twelfth grade or its equivalent" in the definition of "Higher education," inserted "senior" in the definition of "Institutions of higher education," and added the definition of "Senior colleges."

§ **116-156. Membership; appointment, term and qualifications; vacancies.**—The Board shall consist of fifteen citizens of North Carolina, one of whom shall be a member of the State Board of Education to be appointed by the Governor, eight of whom shall be appointed by the Governor to represent the public at large, but none of whom shall be officers or employees of the State, or officers, employees or trustees of the institutions of higher education, four of whom shall be selected by the boards of trustees of state-supported senior colleges, and two of whom shall be selected by the board of trustees of the University, provided, no trustee member shall be a member of the General Assembly. The four senior colleges, whose trustees shall select one of their members as a Board member to serve for a two-year term, shall be selected by the Governor in such order of rotation as he may choose every two years; provided, that the right of selection of such Board member shall be rotated among all institutions equally.

Members of the Board other than the six selected by the trustees of institutions shall be appointed by the Governor for terms of six years, except that of the first Board appointed, three members shall serve for two years, three shall serve for four years and three for six years. Terms of all members of the first Board so selected shall commence July 1, 1965.

All regular appointments, except appointments to the first Board, shall be subject to confirmation by the House of Representatives and the Senate in joint session assembled. The Governor shall forward all such appointments, except those of the first Board, to the General Assembly before the fortieth legislative day of each regular session. The Governor shall, without such confirmation, appoint members to fill vacancies for unexpired terms.

Appointees to the Board shall be selected for their interest in and ability to contribute to the fulfillment of the purpose of the Board. All members of the Board shall be deemed members-at-large, charged with the responsibility of serving the best interests of the whole State. (1955, c. 1186, s. 3; 1965, c. 1096, s. 2.)

Editor's Note. — The 1965 amendment rewrote this section.

§ **116-157. Chairman, vice-chairman and secretary.**—The Board shall elect annually from among its members a chairman, vice-chairman, and a secretary. (1955, c. 1186, s. 4.)

§ **116-158. Powers and duties generally.**—The Board shall have the following specific powers and duties, in the exercise and performance of which it shall be subject to the provisions of article 1, chapter 143 of the General Statutes except as herein otherwise provided:

(1) The primary function of the Board of Higher Education shall be to plan and coordinate the major educational functions and activities of higher education in the State and to allot the functions and activities of the institutions of higher education in addition to the purposes specified in articles 1 and 2 of chapter 116 of the General Statutes. The Board shall not, however, allot to any senior college the right to award the doctor's degree. The Board shall give the Governor, the General Assembly and the various institutions advice on higher education policy and problems.

(2) In carrying out the duties prescribed in subdivision (1) hereof and subject thereto, the Board shall determine the types of degrees which shall be granted by each of such institutions.

(3) The Board shall cause to be made such visits to the institutions as it shall deem necessary and proper in the performance of its duties.

(4) The Board shall prescribe uniform statistical reporting practices and policies to be followed by such institutions where it finds such uniformity will promote the purpose of the Board.

(5) Subject to the provisions of subdivision (1), all institutions included in the State System of Higher Education shall conform to the educational functions and activities assigned to them respectively; provided, that the Board shall not require any institution to abandon or discontinue any existing educational functions or activities, if, after notice and hearing, the institution is not in agreement with the decision of the Board, until such decision is first recommended to any approved by the General Assembly.

(6) Each institution shall furnish the Board a copy of its biennial budget requests and related data at the same time said requests are furnished to the Advisory Budget Commission. The Board shall review the institutional budget requests to determine whether the same are consistent with the primary purposes of the institution and with the functions and activities allocated to the institution by statute or by the Board. The Board shall concentrate on broad fiscal policy and avoid a line-by-line detailed review of budget requests. The Board shall advise the Advisory Budget Commission and the institution of any budget requests inconsistent with the purposes and allocated functions and activities.

(7) Any requests of an institution for transfers and changes as between objects and items in the approved budget of such institution and involving the establishment of new educational functions or activities shall be submitted to the Board of Higher Education for review to determine the compatibility of the request with the assigned functions of the respective institution.

(8) The Board shall possess such powers as are necessary and proper for the exercise of the foregoing specific powers, including the power to make and enforce such rules and regulations as may be necessary for effectuating the provisions of this article. (1955, c. 1186, s. 5; 1959, c. 326, ss. 2-7; 1965, c. 1096, s. 3.)

Editor's Note.—The 1965 amendment rewrote this section.

§ **116-159. Board's decisions limited by appropriations.**—The exercise of the powers conferred on the Board and its decisions of an educational nature shall be made by the Board within the limits of appropriated funds and fiscal availability. (1955, c. 1186, s. 6; 1965, c. 1096, s. 4.)

Editor's Note. — The 1965 amendment deleted a former provision pertaining to approval of fiscal decisions by the Director of the Budget.

§ **116-160. Hearings concerning proposed action.**—Before final action is taken by the Board in the exercise of powers conferred by § 116-158, the presidents and such persons as they may designate shall, upon request, be granted an opportunity to be heard by the Board concerning the proposed action. (1955, c. 1186, s. 7; 1959, c. 326, s. 8; 1965, c. 1096, s. 5.)

Editor's Note.—The 1965 amendment deleted former references to subdivisions of § 116-158, and inserted "upon request."

§ **116-161. Licensing of institutions; regulation of degrees.**—(a) No educational institution created or established in this State after April 15, 1923, by any person, firm, or corporation shall have power or authority to confer degrees upon any person except as provided in this section.

(b) The Board of Higher Education, under such standards as it shall establish, may issue its license to confer degrees in such form as it may prescribe to an educational institution established in this State after April 15, 1923, by any person, firm, organization, or corporation; but no educational institution established in the State subsequent to that date shall be empowered to confer degrees unless it has income sufficient to maintain an adequate faculty and equipment sufficient to provide adequate means of instruction in the arts and sciences, or any other recognized field of learning or knowledge.

(c) All institutions licensed under this section shall file such information with the Director of Higher Education as the Board of Higher Education may direct, and the Board may evaluate any institution applying for a license to confer degrees under this section. If any such institution shall fail to maintain the required standards, the Board of Higher Education shall revoke its license to confer degrees, subject to a right of review of this decision in the manner provided in §§ 143-306 through 143-316.

(d) The State Board of Education shall have sole authority to administer and supervise, at the State level, the system of community colleges, technical institutes, and industrial education centers provided in chapter 115A, and shall regulate the granting of appropriate awards and marks of distinction by those institutions. (1955, c. 1186, s. 8; 1963, c. 448, s. 26.)

Editor's Note.—The 1963 amendment rewrote this section.

§ **116-162. Biennial reports.**—The Board shall prepare and publish biennially a report to the Governor, the General Assembly, and such institutions setting forth the progress, needs and recommendations of the Board. (1955, c. 1186, s. 9.)

§ **116-163. Office space; Director of Higher Education; review of actions of Director; other employees.**—In order to effectuate the provisions of this article, the Board shall be furnished suitable quarters in Raleigh, and shall, subject to the approval of the Governor, appoint a full-time Director of Higher Education. The salary of the Director of Higher Education shall be fixed by the Governor subject to the approval of the Advisory Budget Commission. The Director of Higher Education shall have training and experience in the field of higher education and shall be well qualified to serve as the Director of a State System of Higher Education as contemplated by this article. The Director of Higher Education shall be responsible to the Board and shall perform such duties and exercise such powers as shall be prescribed by the Board. Any institution aggrieved by any action of the Director of Higher Education shall, upon request, be afforded an opportunity to be heard by the Board with respect thereto. The Board shall, within the limits of funds provided by law, appoint such professional staff members as shall be sufficient to carry out the provisions of this article, whose salaries shall be fixed by the Governor subject to the approval of the Advisory Budget Commission, and such other necessary employees who shall be subject to the provisions of article 2, chapter 143 of the General Statutes. (1955, c. 1186, s. 10; 1957, c. 541, s. 21; 1965, c. 1096, s. 6.)

Editor's Note.—The 1965 amendment rewrote the former fifth sentence and made it the present last sentence, made the former last sentence the present fifth sentence, and in such sentence deleted "or decision" formerly appearing between "action" and "of the Director."

§ **116-164. Compensation and expenses of members.**—Members of the Board shall receive no compensation for their services other than such per diem allowances and such allowance for travel expenses as shall be provided in each biennial Appropriation Act for such members. (1955, c. 1186, s. 11.)

§ **116-165. Necessary expenditures to be provided for in budget.**—The necessary expenditures of the Board shall be provided for in a budget subject to the terms of article 1, chapter 143 of the General Statutes. (1955, c. 1186, s. 12.)

§ **116-166. Recommendations concerning employment of persons by institutions prohibited.**—No member or employee of the Board shall make any recommendation concerning the prospective employment of any person by any of such institutions. (1955, c. 1186, s. 13.)

§ **116-167. Control over institutions by boards of trustees.**—The various boards of trustees of the institutions of higher education shall continue to exercise such control over the institutions as is provided by law, subject only to the North Carolina Board of Higher Education within the limits of its jurisdiction as herein specified. It is not intended that the trustees of such institutions shall be divested of any powers or initiative now existing with reference to the internal affairs of such institutions, except to the extent that same are affected by the Board's exercise of the powers and performance of the duties specified in this article. (1955, c. 1186, s. 14.)

ARTICLE 17.

College Revolving Fund.

§ 116-168. Establishment, purpose and nature of Fund; loans.—There is hereby established a revolving fund to be known as the "College Revolving Fund." The College Revolving Fund shall be separate and distinct from other funds of the State, and shall be used only for the purpose of constructing, reconstructing, renovating, adding to and equipping dormitories and other self-liquidating buildings and facilities at institutions of higher education owned and operated by the State of North Carolina.

The College Revolving Fund shall consist of such moneys as shall from time to time be appropriated to or for it by the General Assembly of North Carolina out of the general fund or other funds of the State, of such moneys, securities or other property as may be donated, bequeathed or devised to it from any other sources, of all moneys received in payment of principal and interest on loans made from said Fund, and of all other income derived from and accretions to said Fund.

Funds accruing to the College Revolving Fund and all notes evidencing loans therefrom shall be deposited with the State Treasurer.

The Advisory Budget Commission, under such rules and regulations as it may deem advisable, not inconsistent with the provisions of this article, may, in accordance with priorities of need as determined by the North Carolina Board of Higher Education, make loans from the College Revolving Fund, for the aforesaid purposes, to institutions of higher education owned and operated by the State of North Carolina; provided, however, that no such loan shall be made for any project which shall not have been previously approved by the General Assembly.

Warrants for the payment of money from the College Revolving Fund shall be issued upon the joint order of the chairman of the Advisory Budget Commission and the Board of Higher Education. (1957, c. 1252, s. 1.)

§ 116-169. Terms of loans.—Loans from the College Revolving Fund shall be made upon such terms and conditions as shall be determined by the Advisory Budget Commission, provided, however, that the term of such loans shall not exceed fifty (50) years and interest charged thereon shall not exceed four percent (4%) per annum. All such loans shall be evidenced by a promissory note or notes of the institution to which the loan is made, duly executed in the name of the institution by the chairman of the board of trustees, and attested by its secretary, pursuant to resolution duly adopted by the board of trustees of the institution. No institution to which any such loan is made shall mortgage or otherwise encumber any building or other facility constructed in whole or in part with the proceeds of such loans or encumber any of the revenue derived from such building or facility. (1957, c. 1252, s. 2.)

§ 116-170. How loans secured and paid.—Room rentals for dormitories, and rents, fees, or charges to be made in connection with the use of other facilities or buildings constructed with loans from the College Revolving Fund shall be fixed, and if necessary changed from time to time, pursuant to agreement between the borrowing institution and the Advisory Budget Commission at such amount or amounts as will provide for the operation and maintenance of the building or other facility and equipment and will insure the liquidation of the loan according to its terms; provided, however, that if agreement cannot be reached, the Advisory Budget Commission shall have authority to fix all such rents, fees and charges. Payments on such loans shall be made by the borrowing institution to the State Treasurer, who shall deposit same in the College Revolving Fund. The borrowing institution shall have the privilege of prepaying such loans and interest accrued thereon without penalty. (1957, c. 1252, s. 3.)

ARTICLE 18.

Scholarship Loan Fund for Prospective Teachers.

§ 116-171. Establishment of Fund.—There is hereby established a revolving loan fund which shall be known as the "Scholarship Loan Fund for Prospective Teachers." (1957, c. 1237.)

§ 116-172. Appropriations paid into Fund; how administered.—Such funds as may be appropriated by the General Assembly to said Fund or to the State Board of Education for the purpose of a student loan fund for teacher education shall be paid into the Scholarship Loan Fund for Prospective Teachers and administered by the State Board of Education and the State Superintendent of Public Instruction as follows:

During the first year of the 1957-1959 biennium, to provide for prospective teachers not to exceed 300 regular scholarship loans in the amount of not more than three hundred fifty dollars ($350.00) each, and for the second year of the biennium to provide for such persons not to exceed 600 regular scholarship loans in the amount of not more than three hundred fifty dollars ($350.00) each, and for each summer of said biennium to provide for prospective teachers and for teachers taking undergraduate courses not to exceed 200 summer school scholarship loans in the amount of not more than seventy-five dollars ($75.00) each; provided, however, the State Board of Education in its discretion may, within the funds available, vary the number and proportion of regular and summer scholarship loans to be established in any one year.

During years after the first biennium in which this Fund shall be established, loans of the type and amounts provided for during the first biennium shall be made in such numbers and amounts and proportions as the State Board of Education in its discretion may prescribe within the funds available from appropriations or otherwise. (1957, c. 1237.)

§ 116-173. Duration of Fund; loans repaid and interest received added to Fund and administered for same purposes.—The Scholarship Loan Fund for Prospective Teachers shall continue in effect until terminated by action of the General Assembly of North Carolina and such amounts of loans as shall be repaid from time to time under the provisions of this article, together with such amounts of interest as may be received on account of loans made shall become a part of the principal amount of said Loan Fund and shall be administered for the same purposes and under the same provisions as are set forth herein to the end that such funds may be utilized in addition to such further amounts as may be appropriated from time to time by the General Assembly to said Loan Fund. (1957, c. 1237.)

§ 116-174. Fund administered by State Superintendent of Public Instruction; rules and regulations.—The Scholarship Loan Fund for Prospective Teachers shall be administered by the State Superintendent of Public Instruction, under the following rules and regulations, and under such further rules and regulations as the State Board of Education shall in its discretion promulgate:

(1) Any resident of North Carolina who is interested in preparing to teach in the public schools of the State shall be eligible to apply in writing to the State Superintendent of Public Instruction for a regular scholarship loan in the amount of not more than three hundred fifty dollars ($350.00) per academic school year and any such person or any person who is teaching in the public schools of the State and is interested in taking further undergraduate courses shall be eligible to apply for a summer school scholarship loan in the amount of not more than seventy-five dollars ($75.00). Recipients of scholarship loans may attend any North Carolina college or university, public or private, which offers teacher training or work leading to teacher training and which is approved by the State Board of Education; except that scholarship loans may not be used in obtaining credit through correspondence or extension courses.

(2) All scholarship loans shall be evidenced by notes made payable to the State Board of Education which shall bear interest at the rate of 4% per annum from and after September 1 following fulfillment by a prospective teacher of the requirements for a teacher's certificate based upon the bachelor's degree; or in the case of persons already teaching in the public schools who obtain scholarship loans such notes shall bear interest at the prescribed rate from and after September 1 of the school year beginning immediately after the use of such scholarship loans; or in the event any such scholarship shall be terminated under the provisions of subdivision (3) of this section then such notes shall bear interest from the date of such termination. A minor recipient who signs such note or notes shall also obtain the endorsement thereon by a parent, if there be a living parent, unless such endorsement is waived by the Superintendent of Public Instruction. Such minor recipient shall be obligated upon such note or notes as fully as if he or she were of age and shall not be permitted to plead such minority as a defense in order to avoid the obligations undertaken upon such note or notes.

(3) Each recipient of a scholarship loan under the provisions of this program shall be eligible for scholarship loans each year until he has qualified for a teacher's certificate based upon the bachelor's degree, but he shall not be so eligible for more than four years nor after qualifying for said certificate. The permanent withdrawal of any recipient from college or failure of such recipient to do college work in a manner acceptable to the State Superintendent of Public Instruction will immediately forfeit such recipient's right to retain such scholarship and subject such scholarship to termination by the State Superintendent of Public Instruction in his discretion. All terminated scholarships shall be regarded as vacant and subject to being awarded to other eligible persons.

(4) Except under emergency conditions acceptable to the State Superintendent of Public Instruction, recipients of scholarship loans shall enter the public school system of North Carolina at the beginning of the next school term after qualifying for a teacher's certificate, based upon the bachelor's degree, or, in case of persons already teaching in the public schools, at the beginning of the next school term after the use of such loan. All teaching service for which the recipient of any scholarship loan is obligated shall be rendered within seven (7) years after the completion of the use of each such scholarship loan.

(5) For each full school year taught in a North Carolina public school the recipient of a scholarship loan shall receive credit upon the amount due by reason of such loan equal to all interest accrued upon the loan

to that time plus a credit of three hundred fifty dollars ($350.00) upon the principal amount of such obligation or such lesser amount as may remain due upon said principal; provided, however, that in lieu of teaching in the public schools a recipient may elect to pay in cash the full amount of scholarship loans received plus interest then due thereon or any part thereof which has not been cancelled by the State Board of Education by reason of teaching service rendered.

(6) If any recipient of a scholarship loan who is fulfilling his obligation under subdivision (4) of this section dies within the seven-year period, or if any recipient dies during the period of attendance at a college or university under a scholarship loan, any balance that has not been discharged through service shall be automatically cancelled.

If any recipient of a scholarship loan fails to fulfill his obligations under subdivision (4) of this section, other than as provided above, the amount of his loan and accrued interest, if any, shall be due and payable from the time of failure to fulfill such obligations.

(7) The State Superintendent of Public Instruction shall award scholarship loans with due consideration to such factors and circumstances as: Aptitude, purposefulness, scholarship, character, financial need, and areas or subjects of instruction in which the demands for teachers are greatest. Since the primary purpose of this article is to attract worthy young people to the teaching profession, preference shall be given to high school seniors in the awarding of scholarships. (1957, c. 1237.)

ARTICLE 18A.

Contracts of Minors Borrowing for Higher Education.

§ **116-174.1. Minors authorized to borrow for higher education; interest; requirements of loans.**—All minors in North Carolina of the age of 17 years and upwards shall have full power and authority to enter into written contracts of indebtedness with persons, North Carolina firms and corporations and to execute notes evidencing such indebtedness, which notes shall bear interest, if any, at no greater than six percent (6%) per annum. Such loans shall be:

(1) Unsecured by the conveyance of any property as security, whether real, personal or mixed;

(2) For the sole purpose of borrowing money to obtain a higher education at a North Carolina college, university, junior college, or industrial education center; provided, however, that none of the proceeds of any such loans shall be used to pay for any correspondence courses;

(3) The proceeds of the loan shall be disbursed either directly to a college, university, junior college, or industrial education center for the benefit of the borrower, or jointly to the borrower and the college, university, junior college, or industrial center. (1963, c. 780.)

ARTICLE 19.

Revenue Bonds for Student Housing.

§ **116-175. Definitions.**—As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent.

(1) The word "board" shall mean the board of trustees of any of the following: The University of North Carolina, Agricultural and Technical College of North Carolina, Appalachian State Teachers College, East Carolina College, Elizabeth City State College, Fayetteville State

Teachers College, North Carolina College at Durham, Pembroke State College, Western Carolina College, and Winston-Salem State College, Asheville-Biltmore College, and Wilmington College.

(2) The word "cost" as applied to a project shall include the cost of acquisition or construction, the cost of all labor, materials and equipment, the cost of all lands, property, rights and easements acquired, financing charges, interest prior to and during construction and, if deemed advisable by the board, for one year after completion of construction, cost of plans and specifications, surveys and estimates of cost and/or revenues, cost of engineering and legal services, and all other expenses necessary or incident to such acquisition or construction, administrative expense and such other expenses, including reasonable provision for initial operating expenses, as may be necessary or incident to the financing herein authorized. Any obligation or expense incurred by the board prior to the issuance of bonds under the provisions of this article in connection with any of the foregoing items of cost may be regarded as a part of such cost.

(3) The word "institution" shall mean each of the institutions enumerated in § 116-2 and § 116-45.

(4) The word "project" shall mean and shall include any one or more buildings for student housing of any size or type approved by the board of trustees, the Board of Higher Education, and the Advisory Budget Commission, and any enlargements or improvements thereof or additions thereto, so approved for the housing of students at either institution, together with the necessary land and equipment. The approval of a project by the Board of Higher Education and the Advisory Budget Commission shall specify a time within which construction contracts shall be awarded. (1957, c. 1131, s. 1; 1963, cc. 421, 422; c. 448, s. 20.1; c. 1158, ss. 1, 1½; 1965, c. 31, s. 3.)

Cross References.—As to revenue bonds for services and auxiliary facilities at the University of North Carolina, see §§ 116-41.1 to 116-41.12.

As to change of name of Winston-Salem Teachers College to Winston-Salem State College and Fayetteville State Teachers College to Fayetteville State College, see § 116-45 and note thereto.

Editor's Note. — Pursuant to Session Laws 1963, c. 422, codified as § 116-45.1, "Elizabeth City State College" has been substituted for "Elizabeth City State Teachers College" in subdivision (1). Session Laws 1963, c. 448, s. 20.1, rewrote subdivision (3).

Session Laws 1963, c. 1158, s. 1, added "Asheville-Biltmore College, Charlotte College and Wilmington College" at the end of subdivision (1). Session Laws 1963, c. 1158, s. 1½, added the same words at the end of subdivision (3). However, subdivision (3) had been rewritten by Session Laws 1963, c. 448, s. 20.1, and as rewritten it includes the three colleges by referring to § 116-45, to which they were added by Session Laws 1963, c. 448, s. 21. Subdivision (3) is set out above as rewritten by Session Laws 1963, c. 448, s. 20.1.

The 1965 amendment deleted "Charlotte College" following "Asheville-Biltmore College" in subdivision (1).

§ **116-176. Issuance of bonds.**—The board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bonds of the board for the purpose of acquiring or constructing any project or projects. The bonds of each issue shall be dated, shall mature at such time or times not exceeding fifty years from their date or dates, shall bear interest at such rate or rates not exceeding five per centum (5%) per annum, as may be determined by the board, and may be redeemable before maturity, at the option of the board, at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the bonds. The board shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this article or any recitals in any bonds issued under the provisions of this article, all such bonds shall be deemed to be negotiable instruments under the laws of this State. The bonds may be issued in coupon or registered form or both, as the board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the board, but no sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than five per centum (5%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued by the board under the provisions of this article, subject to the approval of the Advisory Budget Commission, but without obtaining the consent of any other commission, board, bureau or agency of the State, and without any other proceedings or the happening of any other conditions or things than those consents, proceedings, conditions or things which are specifically required by this article.

Revenue bonds issued under the provisions of this article shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds. (1957, c. 1131, s. 2.)

§ 116-177. Revenues for payment of bonds; rules for use of facilities.—So long as any bonds issued under this article shall be outstanding the board shall fix, and may revise from time to time, rentals for the facilities to be furnished by any project financed under this article or for the right to use any such facilities or to receive any such services. Such rentals shall be fixed and revised so that the revenues received by the board from any project or projects, together with any other available funds, will be sufficient at all times

(1) To pay the cost of maintaining, repairing and operating such project or projects, including reserves for such purposes, and

(2) To pay when added to increased rentals from existing facilities the principal of and the interest on the bonds for the payment of which such revenues are pledged and to provide reserves therefor.

The board shall increase the rentals for the facilities furnished by any existing dormitories at any institution to provide, to the extent necessary, additional funds to liquidate in full any revenue bonds issued under this article.

The board is further authorized to make and enforce and to contract to make and enforce parietal rules that shall insure the maximum use of any project or existing facilities. (1957, c. 1131, s. 3.)

§ **116-178. Trust agreement.**—In the discretion of the board and subject to the approval of the Advisory Budget Commission, each or any issue of revenue bonds may be secured by a trust agreement by and between the board and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. The resolution authorizing the issuance of the bonds or such trust agreement may pledge to the extent necessary the revenues to be received from any project or projects at any institution and from any similar existing facilities described in § 116-175 (4) at the same institution, in excess of amounts now charged to each occupant of such project, but shall not convey or mortgage any such project or existing facilities, and may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the board in relation to the acquisition or construction of such project or projects and in relation to the maintenance, repair, operation and insurance of such project or projects and such existing facilities, the fixing and revising of rentals and other charges; and, the custody, safeguarding and application of all moneys, and for the employment of consulting engineers or architects in connection with such acquisition, construction or operation. Notwithstanding the provisions of any other law the board may carry insurance on any such project or projects in such amounts and covering such risks as it may deem advisable. It shall be lawful for any bank or trust company incorporated under the laws of the State of North Carolina which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the board. Such resolution or trust agreement may set forth the rights and remedies of the bondholders and of the trustees, if any, and may restrict the individual right of action by bondholders. Such resolution or trust agreement may contain such other provisions in addition to the foregoing as the board may deem reasonable and proper for the security of the bondholders.

The board may provide for the payment of the proceeds of the sale of the bonds and the revenues of any project or existing facilities or part thereof to such officer, board or depository as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out the provisions of such resolution or trust agreement may be treated as a part of the cost of operation.

All pledges of revenues under the provisions of this article shall be valid and binding from the time when such pledges are made. All such revenues so pledged and thereafter received by the board shall immediately be subject to the lien of such pledges without any physical delivery thereof or further action, and the lien of such pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the board, irrespective of whether such parties have notice thereof. (1957, c. 1131, s. 4.)

§ 116-179. Sale of bonds; functions performed by executive committee.—The board may authorize its executive committee to sell any bonds which the board has, with the approval of the Advisory Budget Commission, authorized to be issued under this article in such manner and under such limitations or conditions as the board shall prescribe and to perform such other functions under this article as the board shall determine. (1957, c. 1131, s. 5.)

§ 116-180. Moneys received deemed trust funds.—All moneys received pursuant to the authority of this article shall be deemed to be trust funds, to be held and applied solely as provided in this article. The resolution authorizing the issuance of bonds or the trust agreement securing such bonds shall provide that any officer to whom, or bank, trust company or fiscal agent to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as such resolution or trust agreement may provide. (1957, c. 1131, s. 6.)

§ 116-181. Remedies.—Any holder of revenue bonds issued under the provisions of this article or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent that the rights herein given may be restricted by the resolution authorizing the issuance of such bonds or by such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State of North Carolina or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this article or by such resolution or trust agreement to be performed by the board or by any officer thereof, including the fixing, charging and collecting of fees, rentals and other charges. (1957, c. 1131, s. 7.)

§ 116-182. Refunding bonds.—The board is hereby authorized, subject to the approval of the Advisory Budget Commission, to issue from time to time revenue refunding bonds for the purpose of refunding any revenue bonds issued by the board in connection with any project or projects at any one institution, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The board is further authorized, subject to the approval of the Advisory Budget Commission, to issue from time to time revenue refunding bonds for the combined purpose of

(1) Refunding any revenue bonds or revenue refunding bonds issued by the board in connection with any project or projects at any one institution, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and

(2) Paying all or any part of the cost of acquiring or constructing any additional project or projects at the same institution.

The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the board with respect to the same, shall be governed by the foregoing provisions of this article insofar as the same may be applicable. (1957, c. 1131, s. 8.)

Cross Reference.—As to refunding bonds issued under this article, see § 116-195.

§ 116-183. Acceptance of grants; exemption from taxation.—The board is hereby authorized, subject to the approval of the Advisory Budget Commission, to accept grants of money or materials or property of any kind for any project from a federal agency, private agency, corporation or individual, upon such terms and conditions as such federal agency, private agency, corporation or individual may impose. The bonds issued under the provisions of this article and the income therefrom shall at all times be free from taxation within the State. (1957, c. 1131, s. 9.)

§ **116-184. Article cumulative.**—This article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of revenue bonds or revenue refunding bonds under the provisions of this article need not comply with the requirements of any other law applicable to the issuance of bonds. (1957, c. 1131, s. 10.)

§ **116-185. Inconsistent laws declared inapplicable.**—All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this article. (1957, c. 1131, s. 11.)

ARTICLE 20.

Motor Vehicles of Students.

§ **116-186. Registration and regulation of motor vehicles maintained and operated by students on campuses.**—The respective boards of trustees of the institutions enumerated in articles 1, 2, and 3 of chapter 116 of the General Statutes may adopt reasonable rules and regulations governing the registration and operation on the campuses thereof of motor vehicles maintained and operated by students enrolled therein and may, in connection with such registration, charge a fee therefor not in excess of twenty-five dollars ($25.00) annually, which fee shall be placed in a special fund at each institution, to be used by appropriate resolution of the board of trustees to develop, maintain, and supervise parking areas and facilities. No fee shall be charged on those motor vehicles operated by physically handicapped students. (1961, c. 1192; 1963, cc. 421, 422; 1965, c. 31, s. 3.)

Editor's Note.—The 1965 amendment rewrote the section.

ARTICLE 21.

Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.

§ **116-187. Purpose of article.**—The purpose of this article is to authorize the boards of trustees of the educational institutions designated herein to issue revenue bonds, payable from rentals, charges, fees (including student fees) and other revenues but with no pledge of taxes or the faith and credit of the State or any agency or political subdivision thereof, to pay the cost, in whole or in part, of buildings and other facilities for the housing, health, welfare, recreation and convenience of students enrolled at said institutions. (1963, c. 847, s. 1.)

§ **116-188. Credit and taxing power of State not pledged; statement on face of bonds.**—Revenue bonds issued as in this article provided shall not be deemed to constitute a debt or liability of the State or any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the State nor the board (herein mentioned) shall be obligated to pay the same or the interest thereon except from revenues as herein defined and that neither the faith and credit nor the taxing power of the State or of any political subdivision or instrumentality thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue bonds hereunder shall not directly or indirectly or contingently obligate the State or any political subdivision thereof to levy or to pledge any taxes whatsoever therefor. (1963, c. 847, s. 2.)

§ **116-189. Definitions.**—As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The word "board" shall mean the board of trustees of any of the following: The University of North Carolina, Agricultural and Technical College of North Carolina, Appalachian State Teachers College, Asheville-Biltmore College, East Carolina College, Elizabeth City State College, Fayettesville State College, North Carolina College at Durham, Pembroke State College, Western Carolina College, Wilmington College, and Winston-Salem State College, or such above-referred to institution regardless of whatever name it may be called, or any additional state-supported institutions of higher learning that may be provided by the General Assembly of North Carolina or, if any such board shall be abolished, the board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers vested under this article in the board shall be given by law.

(2) The word "cost," as applied to any project, shall include the cost of acquisition or construction, the cost of acquisition of all property, both real and personal, or interests therein, the cost of demolishing, removing or relocating any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all labor, materials, equipment and furnishings, financing charges, interest prior to and during construction and, if deemed advisable by the board, for a period not exceeding one (1) year after completion of such construction, provisions for working capital, reserves for interest and for extensions, enlargements, additions and improvements, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing the project, and such other expenses as may be necessary or incident to the acquisition or construction of the project, the financing of such acquisition or construction, and the placing of the project in operation. Any obligation or expense incurred by the board prior to the issuance of bonds under the provisions of this article in connection with any of the foregoing items of cost may be regarded as a part of such cost.

(3) The term "existing facilities" shall mean buildings and facilities then existing any part of the revenues of which are pledged under the provisions of any resolution authorizing the issuance of revenue bonds hereunder to the payment of such bonds.

(4) The word "institution" shall mean each of the institutions enumerated in § 116-2 and § 116-45.

(5) The word "project" shall mean and shall include any one or more buildings or facilities for student housing, student activities, physical education or recreation of any size or type approved by the board and the Advisory Budget Commission and any enlargements, improvements or additions so approved of or to any such buildings or facilities now or hereafter existing, including, but without limiting the generality thereof, dormitories and other student housing, dining fa-

cilities, student centers, gymnasiums, field houses and other physical education and recreation buildings, structures and facilities, and necessary land and interests in land, furnishings, equipment and parking facilities. Any project comprising a building or buildings for student activities or any enlargment or improvement thereof or addition thereto may include, without limiting the generality thereof, facilities for student services such as lounges, rest rooms, lockers, offices, stores for books and supplies, snack bars, cafeterias, restaurants, laundries, cleaning, postal, banking and similar student services, offices, rooms and other facilities for guests and visitors and facilities for meetings and for recreational, cultural and entertainment activities.

(6) The word "revenues" shall mean all or any part of the rents, charges, fees (including student fees) and other income revenues derived from or in connection with any project or projects and existing facilities, and may include receipts and other income derived from athletic games and public events. (1963, c. 847, s. 3; 1965, c. 31, s. 3.)

Editor's Note.—The 1965 amendment deleted "Charlotte College" following "Asheville-Biltmore College" in subdivision (1) and rewrote subdivision (4).

§ **116-190. General powers of board of trustees.**—The board is authorized, subject to the requirements of this article:

(1) To determine the location and character of any project or projects and to acquire, construct and provide the same and to maintain, repair and operate and enter into contracts for the management, lease, use or operation of all or any portion of any project or projects and any existing facilities;

(2) To issue revenue bonds as hereinafter provided to pay all or any part of the cost of any project or projects, and to fund or refund the same;

(3) To fix and revise from time to time and charge and collect (i) student fees from students enrolled at the institution operated by the board, (ii) rates, fees, rents and charges for the use of and for the services furnished by all or any portion of any project or projects and (iii) admission fees for athletic games and other public events;

(4) To establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this article to make and enforce, rules and regulations for the use of and services rendered by any project or projects and any existing facilities, including parietal rules, when deemed desirable by the board, to provide for the maximum use of any project or projects and any existing facilities;

(5) To acquire, hold, lease and dispose of real and personal property in the exercise of its powers and the performance of its duties hereunder and to lease all or any part of any project or projects and any existing facilities for such period or periods of years, not exceeding forty (40) years, upon such terms and conditions as the board determines subject to the provisions of G.S. 143-341;

(6) To employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in its judgment in connection with any project or projects and existing facilities, and to fix their compensation;

(7) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;

(8) To receive and accept from any federal, State or other public agency and any private agency, person or other entity donations, loans, grants, aid or contributions of any money, property, labor or other things of value for any project or projects, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided; and

(9) To do all acts and things necessary or convenient to carry out the powers granted by this article. (1963, c. 847, s. 4.)

§ **116-191. Issuance of bonds.**—The board is hereby authorized to issue, subject to the approval of the Advisory Budget Commission, at one time or from time to time, revenue bonds of the board for the purpose of paying all or any part of the cost of acquiring, constructing or providing any project or projects. The bonds of each issue shall be dated, shall mature at such time or times not exceeding fifty (50) years from their date or dates, shall bear interest at such rate or rates not exceeding five per centum (5%) per annum, as may be determined by the board, and may be redeemable before maturity, at the option of the board, at such price or prices and under such terms and conditions as may be fixed by the board prior to the issuance of the bonds. The board shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this article or any recitals in any bonds issued under the provisions of this article, all such bonds shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such bonds or any trust agreement securing the same. The bonds may be issued in coupon or registered form or both, as the board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the board, but no sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than five per centum (5%) per annum, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, bonds may be issued under this article and other powers vested in the board under this article may be exercised by the board without obtaining the consent of any department, division, commission, board, bureau or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this article. (1963, c. 847, s. 5.)

§ 116-192. Trust agreement; money received deemed trust funds; insurance; remedies.—In the discretion of the board and subject to the approval of the Advisory Budget Commission, any revenue bonds issued under this article may be secured by a trust agreement by and between the board and a corporate trustee (or trustees) which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received, but shall not convey or mortgage any project or projects or any existing facilities or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the holders of such bonds as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the board in relation to the acquisition, construction or provision of any project or projects, the maintenance, repair, operation and insurance of any project or projects and any existing facilities, student fees and admission fees and charges and other fees, rents and charges to be fixed and collected, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the board. Any such trust agreement or resolution may set forth the rights and remedies of the holders of the bonds and the rights, remedies and immunities of the trustee or trustees, if any, and may restrict the individual right of action by such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the board may deem reasonable and proper for the security of such holders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the project or projects for which such bonds are issued or as an expense of operation of such project or projects, as the case may be.

All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this article. The board may provide for the payment of the proceeds of the sale of the bonds and the revenues, or part thereof, to such officer, board or depositary as it may designate for the custody thereof, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. Any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such requirements as are provided in this article and in the resolution or trust agreement authorizing or securing such bonds.

Notwithstanding the provisions of any other law the board may carry insurance on any project or projects and any existing facilities in such amounts and covering such risks as it may deem advisable.

Any holder of bonds issued under this article or of any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, and may enforce and compel the performance of all duties required by this article or by such trust agreement or resolution to be performed by the board or by any officer thereof, including the fixing, charging and collecting of fees, rents and charges. (1963, c. 847, s. 6.)

§ **116-193. Fixing fees, rents and charges; sinking fund.**—For the purpose of aiding in the acquisition, construction or provision of any project and the maintenance, repair and operation of any project or any existing facilities, the board is authorized to fix, revise from time to time, charge and collect from students enrolled at the institution under its jurisdiction such student fee or fees for such privileges and services and in such amount or amounts as the board shall determine, and to fix, revise from time to time, charge and collect other fees, rents and charges for the use of and for the services furnished or to be furnished by any project or projects and any existing facilities, or any portion thereof, and admission fees for athletic games and other public events, and to contract with any person, partnership, association or corporation for the lease, use, occupancy or operation of, or for concessions in, any project or projects and any existing facilities, or any part thereof, and to fix the terms, conditions, fees, rents and charges for any such lease, use, occupancy, operation or concession. So long as bonds issued hereunder and payable therefrom are outstanding, such fees, rents and charges shall be so fixed and adjusted, with relation to other revenues available therefor, as to provide funds pursuant to the requirements of the resolution or trust agreement authorizing or securing such bonds at least sufficient with such other revenues, if any, (i) to pay the cost of maintaining, repairing and operating any project or projects and any existing facilities any part of the revenues of which are pledged to the payment of the bonds issued for such project or projects, (ii) to pay the principal of and the interest on such bonds as the same shall become due and payable, and (iii) to create and maintain reserves for such purposes. Such fees, rents and charges shall not be subject to supervision or regulation by any other commission, board, bureau or agency of the State. A sufficient amount of the revenues, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor and for renewals, replacements, extensions, enlargements and improvements as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made, the fees, rents and charges and other revenues or other moneys so pledged and thereafter received by the board shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the board. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of the trust agreement securing the same. (1963, c. 847, s. 7.)

§ **116-194. Vesting powers in executive committee.**—The board may authorize its executive committee to sell any bonds which the board has, with the approval of the Advisory Budget Commission, authorized to be issued under this article in such manner and under such limitations or conditions as the board shall prescribe and to perform such other functions under this article as the board shall determine. (1963, c. 847, s. 8.)

§ **116-195. Refunding bonds.**—The board is hereby authorized, subject to the approval of the Advisory Budget Commission, to issue from time to time revenue refunding bonds for the purpose of refunding any revenue bonds or revenue refunding bonds issued by the board under chapter 1289 of the 1955 Session Laws of North Carolina or under §§ 116-175 to 116-185, inclusive, of the General Statutes of North Carolina or under this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The board is further authorized, subject to the approval of the Advisory Budget Commission, to issue from time to time revenue refunding bonds for the combined purpose of (i) refunding any such revenue bonds or revenue refunding bonds issued by the board under said chapter 1289 or under said §§ 116-175 to 116-185, inclusive, General Statutes, or under this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and (ii) paying all or any part of the cost of acquiring or constructing any additional project or projects.

The issuance of such refunding bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the board with respect to the same, shall be governed by the foregoing provisions of this article insofar as the same may be applicable. (1963, c. 847, s. 9.)

§ **116-196. Exemption from taxation; bonds eligible for investment or deposit.**—Any bonds issued under this article, including any of such bonds constituting a part of the surplus of any bank, trust company or other corporation, and the transfer of and the income from any such bonds (including any profit made on the sale thereof and all principal, interest and redemption premiums, if any) shall at all times be exempt from all taxes or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, which are levied or assessed by the State or by any county, political subdivision, agency or other instrumentality of the State. Bonds issued by the board under the provisions of this article are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companes, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or obligations of the State is now or may hereafter be authorized by law. (1963, c. 847, s. 10.)

§ **116-197. Article provides additional and alternative method.**—This article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, including §§ 116-175 to 116-185, inclusive, of the General Statutes of North Carolina, and shall not be regarded as in derogation of or as repealing any powers now existing under any other law, either general, special or local; provided, however, that the issuance of revenue bonds or revenue refunding bonds under the provisions of this article need not comply with the requirements of any other law applicable to the issuance of bonds. (1963, c. 847, s. 11.)

§ **116-198. Inconsistent laws declared inapplicable.**—All general, special or local laws, or parts thereof, inconsistent herewith are hereby declared to be inapplicable to the provisions of this article. (1963, c. 847, s. 12.)

Article 22.

Visiting Speakers at State-Supported Institutions.

§ **116-199. Use of facilities for speaking purposes.**—The board of trustees of each college or university which receives any State funds in support thereof, shall adopt and publish regulations governing the use of facilities of such college or university for speaking purposes by any person who:

(1) Is a known member of the Communist Party;
(2) Is known to advocate the overthrow of the Constitution of the United States or the State of North Carolina;
(3) Has pleaded the Fifth Amendment of the Constitution of the United States in refusing to answer any question, with respect to Communist or subversive connections, or activities, before any duly constituted legislative committee, any judicial tribunal, or any executive or administrative board of the United States or any state. (1963, c. 1207, s. 1; 1965, Ex. Sess., c. 1, s. 1.)

Editor's Note. — The 1965 amendment rewrote the first paragraph.

For comment on the barring of speakers from State educational institutions, see 42 N.C.L. Rev. 179 (1963).

§ **116-200. Enforcement of article.**—Any such regulations shall be enforced by the board of trustees, or other governing authority, of such college or university, or by such administrative personnel as may be appointed therefor by the board of trustees or other governing authority of such college or university. (1963, c. 1207, s. 2; 1965, Ex. Sess., c. 1, s. 2.)

Editor's Note. — The 1965 amendment substituted "Any such regulations" for "This article" at the beginning of the section.

Section 3 of the 1965 act provides that neither the act nor the provisions of this article as it appeared prior to the 1965 act should repeal or be construed to repeal any provision of article 4 of chapter 14 of the General Statutes (§§ 14-11 to 14-12.1).

Article 23.

State Education Assistance Authority.

§ **116-201. Definitions.**—As used in this article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The words "act" or "undertaking" shall mean the official act of the Authority in connection with the acquisition or disposition of all or any part of obligations or interest therein which the Authority is authorized to buy or sell under G.S. 116-202.
(2) The word "Authority" shall mean the State Education Assistance Authority created by this article, or if the Authority shall be abolished, the board, body, commission or agency succeeding to the principal functions thereof or on whom the powers given by this article to the Authority shall be conferred by law.

(3) The word "obligations" shall mean those evidences of debt which the Authority may buy, sell, endorse or guarantee under the provisions of this article. (1965, c. 1180, s. 1.)

§ 116-202. Authority may buy and sell students' obligations; undertakings of Authority limited to revenues.—In order to facilitate the college education of residents of this State and promote the industrial and economic development of the State, the State Education Assistance Authority (hereinafter created) is hereby authorized and empowered to buy and sell obligations of students at institutions of higher education representing loans made to such students for the purpose of obtaining an education.

No act or undertaking of the Authority shall be deemed to constitute a debt of the State or of any political subdivision thereof or a pledge of the faith and credit of the State or of any such political subdivision, but shall be payable solely from the funds of the Authority. All such acts and undertakings shall contain on the face thereof a statement to the effect that neither the State nor the Authority shall be obligated to pay the same or the interest thereon except from revenues of the Authority and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such acts and undertakings.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the provisions of this article and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this article. (1965, c. 1180, s. 1.)

§ 116-203. Authority created as subdivision of State; appointment, terms and removal of board of directors; officers; quorum; expenses and compensation of directors.—There is hereby created and constituted a political subdivision of the State to be known as the "State Education Assistance Authority." The exercise by the Authority of the powers conferred by this article shall be deemed and held to be the performance of an essential governmental function.

The Authority shall be governed by a board of directors consisting of seven members, each of whom shall be appointed by the Governor. Two of the first members of the board appointed by the Governor shall be appointed for terms of one year, two for terms of two years, two for terms of three years, and one for a term of four years from the date of their appointment; and thereafter the members of the board shall be appointed for terms of four years. Vacancies in the membership of the board shall be filled by appointment of the Governor for the unexpired portion of the term. Members of the board shall be subject to removal from office in like manner as are State, county, town and district officers. Immediately after such appointment, the directors shall enter upon the performance of their duties. The board shall annually elect one of its members as chairman and another as vice-chairman, and shall also elect annually a secretary, or a secretary-treasurer, who may or may not be a member of the board. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the board. In the absence of both the chairman and vice-chairman, the board shall appoint a chairman pro tempore, who shall preside at such meetings. Four directors shall constitute a quorum for the transaction of the business of the Authority, and no vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority. The members of the board shall be entitled to reimbursement for their expenses incurred in attendance upon the meetings of the board or while otherwise engaged in the discharge of their duties. Each member of the board shall also be paid the sum of twenty-five dollars ($25.00) per day for each day or portion thereof during which he is engaged in the performance of his duties. Such expenses and compensation shall be paid out of the treasury of the Authority upon vouchers signed by the chairman of the board or by such other person or persons as may be designated by the board for the purpose. (1965, c. 1180, s. 1.)

§ 116-204. Powers of Authority.—The Authority is hereby authorized and empowered:

(1) To fix and revise from time to time and charge and collect fees for its acts and undertakings;

(2) To establish rules and regulations concerning its acts and undertakings;

(3) To acquire, hold and dispose of personal property in the exercise of its powers and the performance of its duties;

(4) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article;

(5) To employ, in its discretion, consultants, attorneys, accountants, and financial experts, superintendents, managers and such other employees and agents as may be necessary in its judgment, and to fix their compensation to be payable from funds made available to the Authority by law;

(6) To receive and accept from any federal or private agency, corporation, association or person grants to be expended in accomplishing the objectives of the Authority, and to receive and accept from the State, from any municipality, county or other political subdivision thereof and from any other source aid or contributions of either money, property, or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(7) To sue and to be sued; to have a seal and to alter the same at its pleasure; and to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with law to carry into effect the powers and purposes of the Authority;

(8) To do all other acts and things necessary or convenient to carry out the powers expressly granted in this article; provided, however, that nothing in this article shall be construed to empower the Authority to engage in the business of banking or insurance. (1965, c. 1180, s. 1.)

§ 116-205. Titles to property; use of State lands; offices.—(a) Title to any property acquired by the Authority shall be taken in the name of the Authority.

(b) The State hereby consents, subject to the approval of the Governor and Council of State, to the use of any other lands or property owned by the State, which are deemed by the Authority to be necessary for its purposes.

(c) The Authority may establish such offices in state-owned or rented structures as it deems appropriate for its purposes. (1965, c. 1180, s. 1.)

§ 116-206. Acquisition of contingent interests in obligations from lending institutions; collection of delinquent obligations.—With the funds available to the Authority, for purposes other than the payment of personnel and the lease or rental of offices or equipment, the Authority may acquire from any bank or other lending institution of this State a contingent interest not exceeding eighty percent (80%) of any individual obligation; the total contingent interest of the Authority on all such obligations shall not exceed at any one time a sum equal to twelve and one-half times the total funds which the Authority can employ to acquire such contingent interests. When the Authority acquires any such contingent interest, it may require the payment to it of a portion of the interest payable upon any such obligation. In each such acquisition, the Authority shall provide that at such time as the obligation becomes delinquent, the bank or other lending institution shall notify the Authority forthwith, and shall transfer forthwith to the Authority, by assignment or otherwise, an interest in such obligation equal to the contingent interest of the Authority therein. The bank or other lending institution and the Authority shall forthwith take such steps as may be necessary to recover the balance due upon any such obligation; any such recovery shall be apportioned between the Authority and the bank or other lending institution as their respective interests may appear. (1965, c. 1180, s. 1.)

§ **116-207. Terms of acquisitions.**—The Authority shall prescribe the terms, conditions and limitations upon which it will acquire a contingent or direct interest in any obligation and such terms, conditions and limitations shall include, but without limiting the generality hereof, the interest rate payable upon such obligations, the maturities thereof, the terms for payment of principal and interest, applicable life or other insurance which may be required in connection with any such obligation and who shall pay the premiums thereon, the safekeeping of assets pledged to secure any such undertaking, and any and all matters in connection with the foregoing as will protect the assets of the Authority. (1965, c. 1180, s. 1.)

§ **116-208. Construction of article.**—The provisions of this article shall be liberally construed to the end that its beneficial purposes may be effectuated. (1965, c. 1180, s. 1.)

§ **116-209. Trust fund established; use and investment of fund; duties of State Treasurer.**—The appropriation made to the Authority under this article shall be used exclusively for the purpose of acquiring contingent or vested rights in obligations which it may acquire under this article; such appropriations, payments, revenue and interest as well as other income received in connection with such obligations is hereby established as a trust fund. Such fund shall be used for the purposes of the Authority other than maintenance and operation.

The maintenance and operating expenses of the Authority shall be paid from funds specifically appropriated for such purposes. No part of the trust fund established under this section shall be expended for such purposes.

The Authority shall be the trustee of the trust fund hereby created and shall have full power to invest and reinvest such funds, subject to the limitation that no investment shall be made, except upon the exercise of bona fide discretion, in securities which, at the time of making the investment, are, by statute, permitted for the investment of reserves of domestic life insurance companies. Subject to such limitation, the Authority shall have full power to hold, purchase, sell, assign, transfer or dispose of, any of the securities or investments in which any of the funds created herein have been invested, as well as of the proceeds of such investments and any moneys belonging to such funds.

In lieu of exercising all of the powers hereunder with respect to the investment and reinvestment of the several funds, the Authority may delegate such powers to the State Treasurer, in which event the State Treasurer shall exercise the investment powers as prescribed herein.

The State Treasurer shall be the custodian of the assets of the Authority. All payments from the accounts thereof shall be made by him issued upon vouchers signed by such persons as are designated by the Authority. A duly attested copy of a resolution of the Authority designating such persons and bearing on its face the specimen signatures of such persons shall be filed with the State Treasurer as his authority for issuing warrants upon such vouchers. (1965, c. 1180, s. 1.)

Editor's Note. — The appropriation referred to in this section is authorized to be made from the Contingency and Emergency Fund by s. 2 of the act adding this article.

Article 24.

Learning Institute of North Carolina.

§ **116-210. State agencies and institutions may contract with Learning Institute; audits.**—The various agencies and institutions of the State of North Carolina are hereby empowered and authorized to enter into contracts and agreements with the Learning Institute of North Carolina, not inconsistent with its charter and the laws of the State of North Carolina. All funds involved shall be subject to audit by the State Auditor. (1965, c. 1174, s. 1.)

§ **116-211. Contracts for operation of Advancement School authorized.**—The State Board of Education is hereby empowered and authorized to enter into a contract or contracts with the Learning Institute of North Carolina for the operation of the Advancement School at Winston-Salem, North Carolina. (1965, c. 1174, s. 2.)

STATE OF NORTH CAROLINA
Department of Justice
Raleigh, North Carolina
November 15, 1966

I, Thomas Wade Bruton, Attorney General of North Carolina, do hereby certify that the foregoing recompilation of the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Division of Legislative Drafting and Codification of Statutes of the Department of Justice of the State of North Carolina.

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Attorney General of North Carolina

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